

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1171

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-1171

B
P/S

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
vs.
CODELL GRIFFIN,
Defendant-Appellant.

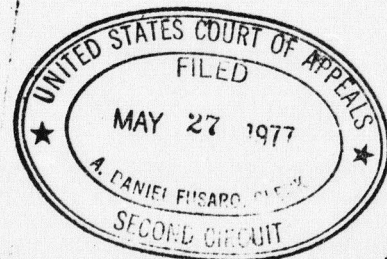
APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

APPENDIX

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695
APP. 1

dwrf 4

Clark-direct

MR. GARNETT: Your Honor, I believe the defendant was convicted for robbery. If he wants to inquire about it he certainly can. I have no objection to that.

Q As I started to ask you, did there come a time in 1969 when you became an informant for the United States Government?

A Yes.

Q Would you tell us how that happened?

A I was called down to the DEA office.

THE COURT: You were what?

THE WITNESS: I had been called down to the DEA office in Yonkers.

THE COURT: To the DEA office in Yonkers.

Q Well, before you came down to the office did there come a time when you spoke with some authorities while you were in jail?

A Yes, I did.

Q And subsequent to that did you go to the DEA offices?

A Yes, I did.

Q Did you speak with anyone there?

A Yes, I did.

Q Who?

A Agent Freddy Ford.

APP-2

1 dwrf 5 Clark-direct

2 Q Fred Ford?

3 A Yes.

4 Q Have you been working with the Government since
5 1969?

6 A Yes.

7 Q Approximately how many cases have you been working
8 on since that time?

9 A Approximately eight.

10 Q Have you been paid any monies in connection with
11 your work with the DEA?

12 A Yes.

13 Q In connection with this case now on trial today
14 have you been paid any monies?

15 A Yes, I have.

16 Q How much money have you been paid?

17 THE COURT: In connection with this case?

18 MR. GARNETT: With this case.

19 A Approximately about \$5,700.

20 Q \$5,700?

21 A Yes.

22 Q Over what period of time have you received that
23 \$5,700?

24 A September, 1976.

25 Q September of 1976?

APP 3.

dwrf 2

Blackburn-direct

1
2 A My duties involve investigating the illicit
3 importation and distribution of narcotics.

4 Q I direct your attention to August of 1975 and
5 particularly August 28th, and ask you did there come a
6 time when you met William Clark?

7 A Yes.

8 Q Do you know him by any nickname?

9 A Yes, I do.

10 Q And what is that?

11 A Country.

12 Q Would you tell us where you met him and how you
13 came to meet him?

14 A Yes. In April -- In August, I met Mr. Clark
15 at the New York Regional Office. He was introduced
16 to me by Special Agent Frederick Ford who is a group
17 supervisor.

18 Q And on that occasion did you have a conversation
19 with Country?

20 A Yes, I did. Country expressed a desire to
21 cooperate --

22 MR. SCHMUKLER: Objection, your Honor.

23 THE COURT: You had a conversation.

24 Q As a result of your conversation with him did
25 you give him any instructions?

ards 2 Blackburn - cross
trial and disposition is made in court. The case remains
until a disposition has been reached in court, so it is
in fact still going on.

Q But everything you are doing now concerning
the case has to do with the court proceedings itself, is
that right? For example, you are not out in the field
investigating any further, are you?

You understand my question?

A I understand. I am formulating an answer.
I myself have not been in the street, no.

Q On August 28, 1975 you met with Country, is
that right?

A Yes.

Q September 12, 1975 you and Country went to
Harlem, 116 Street, is that right?

A Yes.

Q As you told us, you were there for the purpose
of finding Codell Griffin, is that correct?

A No, we were there to buy heroin from Codell
Griffin.

Q Did you buy heroin from Codell Griffin on that
day?

A No.

Q Speak to him that day?

APP. 5

dwrf 4

Blackburn-direct

MR. RIVERS: Objection to the purpose, your Honor.

MR. SCHMUKLER: Your Honor, I object.

THE COURT: Sustained.

Q Did there come a time when you did meet him?

A Yes, I met Mr. Clark.

Q Where did you meet him?

A At a pre-arranged location.

Q Where was that?

A At his house.

Q Where?

A At his house.

Q Subsequent to your meeting him what did you do?

A I conducted a search of Mr. Clark's person for narcotics or other contraband and gave him instructions.

Q Did you anything after that?

A We proceeded to 116th Street to find Codell Griffin and to buy two ounces of pure heroin.

MR. SCHMUKLER: Objection, your Honor.

THE COURT: Go ahead.

Q What did you do after you left Mr. Clark?

A After arriving at 166th Street, Mr. Clark and I walked around the area, looking for --

MR. SCHMUKLER: Objection, your Honor, to

dwrfl 17

Clark-cross

APP. 6

1
2 A Yes.

3 Q Since that date you have been working for the
4 DEA agents?

5 A Yes.

6 Q Mr. Clark, you received \$2,000, that was on June
7 29th of 1976. Do you recall that?

8 A Yes.

9 Q Now, the monies that you received in connection
10 with this case was there an arrangement that you had with
11 Sam Blackburn as to what you were to receive?

12 A Well, not in a way. But yes in a way and
13 yes and no.

14 Q Okay, now on June 29, 1976 when you received that
15 \$2,000 was that for the days services or was that a payment
16 on a sum owed to you for services rendered? Just what kind
17 of arrangement was that for, that \$2,000?

18 A It was a payment.

19 Q Okay. Was that a payment for that day?

20 A No. On the whole case.

21 Q I don't understand you.

22 A It was a payment on the case.

23 Q It was a payment on the case?

24 A Yes, sir.

25 THE COURT: He wants to know did you have any,

APP 7

1 dwrf 18

Clark-cross

2 what was your deal, if any, how much you were going to get
3 and how you were going to get it and why and where. That
4 is what he wants to know.

5 THE WITNESS: It is supposed to be \$5,000.

6 That is what the deal is supposed to be.

7 BY MR. MASON:

8 Q They were supposed to give you \$5,000?

9 A Yes.

10 Q When did you have that agreement, if you recall?
11 When did you enter into that agreement?

12 A I'm not quite sure.

13 Q Not quite sure.

14 Okay. You started working on this case
15 what date?

16 A What date?

17 Q What date, if you recall, what date did you start
18 working.

19 A 1976.

20 Q Okay. That would be 1975, right? That is
21 what you testified to. You started working in 1975. Last
22 year was '76. You started working in '75?

23 A Yes.

24 Q Now, using that as a guide, do you recall
25 whether you had agreed or was it with Sam Blackburn?

dwrf 19

Clark-cross

APP 8

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A Yes.

Q Okay.

Do you recall whether you agreed with Sam Blackburn in 1975 or 1976 that you were to receive \$5,000?

A 1976.

Q Okay. That was 1976 when you entered into an agreement.

A Yes.

Q Now, do you recall approximately what month that was you received say \$2,000 in June, on June 29, 1976. Do you recall before you received that money whether you had an agreement that you were to receive \$5,000?

A Say again, please?

Q Approximately what month, say, January to June was it, if you recall, what month was it --

A Same month.

Q Okay.

You entered into that agreement, that was on June 29, 1976?

A Yes.

Q At that time you had an arrangement with Blackburn that you were going to receive \$5,000 in this case, and the \$2,000 of that was say not the first payment, but that was a payment toward the \$5,000,

APP 9

dwrf 20

Clark-cross

1
2 is that right?

3 A Yes.

4 Q June 29th was the date that you testified you
5 made your first buy, is that right?

6 A Yes.

7 Q When did you receive the \$2,000, before or after?

8 A Before.

9 Q Before.

10 A No, sorry, excuse me.

11 Q Before or after the buy?

12 A Excuse me. Before.

13 Q Now, on July 14th, that is when you testified to
14 that you made two buys, is that right?

15 A Yes.

16 Q You got \$400 for that, is that right?

17 A Yes.

18 Q Now, was there any arrangement as to when you
19 were going to be paid? What dates that you were going to
20 be paid?

21 A No arrangement, no.

22 Q You testified before the grand jury on September
23 29th, is that right?

24 A Yes.

25 Q Do you recall that date?

APP 10

1 dwrf 21

Clark-cross

2 A Yes.

3 Q And you received \$1,000 on September 26th,
4 do you recall that?

5 A Yes.

6 Q And who gave you that money?

7 A Sammy Blackburn.

8 Q Did Sammy Blackburn give you that money in cash?

9 A Yes.

10 Q When he gave you that money on September 26th,
11 where was that?

12 A Downtown, 57th Street in his office.

13 Q That was in his office?

14 A Yes.

15 Q And on that date did he tell you that you were
16 to testify before the grand jury three days later on
17 September 29th?

18 A Say it over again?

19 Q Okay. You testified before the grand jury on
20 September 29th?

21 A Yes. ,

22 Q 1976. And you had a meeting with Sam Blackburn
23 on September 26th, right?

24 A Yes.

25 Q Did he call you to come into the office?

dwrf 23

Clark-cross

Q Do you recall the date that you testified at that trial?

Do you recall it being November 22, 1976?

A Yes, about there, yes.

Q When you testified at that trial -- withdrawn.

Did you receive on November 29, 1976 \$1,500?

A Yes, I did.

Q Who gave you that money?

A I forget the agent's name. That was an agent.

I forgets his name.

Q Blackburn or Sayles, which one?

A No, neither one of those.

Q Neither one of those. This is a new agent?

A It was a white agent. I forgets the name.

Q When you testified at Willie Charles Milom's trial --

MR. GARNETT: Your Honor, again --

THE COURT: Overruled.

Q -- did you have any conversation with the agent? Do you know his name, the guy who gave you \$1,500?

A No, offhand, no.

Q Did you know when you testified at that trial that a few days later you were going to receive \$1,500?

A Well, I didn't know it was that much but yes, I

dwrf 24

Clark-cross

APP 12

1
2 know, yes.

3 Q At the time that you were testifying you knew
4 that you were going to receive say \$1,500 when you finished
5 testifying?

6 A Yes. I didn't know exactly it was going to be
7 \$1,500, but that was for --

8 Q You knew that there was an amount due that you were
9 going to receive after you testified, is that correct?

10 A Yes.

11 Q Did you, when asked on page 55 and 56, what you had
12 received in connection with this case, did you advise
13 or did you testify, did you tell anyone that after you finished
14 testifying in this case --

15 THE COURT: All you can ask him is questions
16 asked and answered. You can't ask him generally to
17 volunteer information. He is not allowed to.

ards 9

W. Clark - cross

896

APP 13

A No, I did not.

Q How much are you thinking of asking?

A I don't have an idea?

Q What do you think your testimony is worth?

A I don't have an idea.

Q \$10 or \$100?

A I don't have an idea.

Q If the defendants are found guilty are you planning so ask for me than if they are found innocent?

MR. GARNETT: I object.

THE COURT: Overruled.

Q If the defendants are found guilty do you plan to ask for more money than if found innocent?

A I probably will, yes.

Q How much are you planning to ask for?

A I don't know.

Q Will you ask for double?

A I don't know. Can't say what I will ask.

Q Mr. Clark, you told us that you can't read, you told us you can write a little bit, is that it? Some writing?

A I can print, yes.

Q Can you print letters or numbers?

A Both, write it down, copy it by looking at it

1 ards ?

2 I can copy it.

3 Q Do you know the alphabet, sir?

4 A Not all of them, no.

5 Q You don't?

6 A No.

7 Q Do you understand when I say do you know the
8 alphabet, do you know how many letters there are in the
9 alphabet?

10 A No.

11 Q Do you know how many letters there are in the
12 alphabet?

13 A No, I don't.

14 Q Could you tell us how many letters in the alpha-
15 bet without telling us which ones?

16 A No, I don't.

17 Q More than four or five letters?

18 A Yes, more than four or five.

19 Q As many as ten, say?

20 A Yes.

21 Q More than that or not?

22 A Yes.

23 Q How many?

24 A I don't know.

25 Q I don't really wish to embarrass you.

APP 14

APP. 15

2 A Six years.

3 Q How much of that sentence did you serve?

4 A About 38 or 39 months, around there.

5 THE COURT: That is in Virginia State?

6 THE WITNESS: Virginia State Prison.

7 Q Do you currently have pending an indictment
8 in the criminal courts of the City of New York?

9 A Yes, I have.

10 Q On what charge have you been indicted?

11 A Burglary.

12 THE COURT: Burglary?

13 THE WITNESS: Yes.

14 Q Did there come a time in February of 1976 when you
15 became an informant for the Drug Enforcement Administration?

16 A Yes, I did.

17 Q Since that time how many cases have you been
18 involved in with the Drug Enforcement Administration?

19 A One.

20 Q Is that the case that is now here on trial?

21 A Yes.

22 Q In connection with your work on that case have
23 you received any monies from the Drug Enforcement Administra-
24 tion?

25 A Yes, I did.

APP 16

1 dwrf 20 J. W. Bryant-direct
2 defendant in this case. It is not here now, and
3 it is not coming in the future.

4 MR. GARNETT: Your Honor, may this be accepted
5 subject to connection?

6 MR. SCHMUKLER: You can't do it on the basis of
7 conversation alone.

8 THE COURT: Subject to connection. You can
9 move to strike it.

10 Q What did you say to Joe and what did he say
11 to you?

12 A I asked Joe was that the same thing that Cody
13 had and he said yeah. At this time I purchased them, left
14 out and got in the car, came back to 118th Street.

15 Q Where did this conversation with Joe take place?

16 A In his apartment.

17 Q How did you get to that apartment?

18 A We caught a cab down there.

19 Q Where was the apartment located?

20 A The apartment was located on 135th or 30th, 137th
21 I think it was.

22 Q Is that where the transaction took place?

23 A Yes, it did.

24 Q What happened in that apartment?

25 A I paid him for 100 quarters. He gave me the

APP 17
63

1 dwrf 15

J. W. Bryant-direct

2 Q Will you tell us how much money you have
3 received?

4 A Approximately \$6,000.

5 Q Over what period of time have you received that
6 \$6,000?

7 A February to October.

8 Q February to October of 1976, is that correct?

9 A Yes.

10 Q In connection with your testimony here today
11 have any promises been made to you by either agents of
12 the DEA or the United States Attorney's Office?

13 A Yes.

14 Q Would you tell us what promises have been made
15 to you?

16 A I wouldn't have to testify against my brothers,
17 the Government will protect me, and I wouldn't be
18 prosecuted for this case.

19 THE COURT: You wouldn't have to testify against
20 your brothers?

21 THE WITNESS: Yes.

22 Q Is your brother John David Bryant?

23 A Yes, he is.

24 Q To your knowledge is he named in the indictment
25 in this case?

ards 2 James Bryant - redirect

may not have agreed with him.

Q Did anyone from the government tell you you would not have to testify against your brother?

A Yes, you told me I wouldn't have to testify against my brother.

Q Was that subsequent to your having told someone from the government that you would not have to testify against your brother?

A No, sir.

THE COURT: The first mention of your brother was from him or you?

THE WITNESS: I told him I wouldn't testify against him.

THE COURT: Before he told you?

THE WITNESS: Right.

Q Who?

A I think I told you.

Q You also testified about a person identified as Gator. Do you remember testifying about Gator?

A Yes.

MR. GARNETT: Could I have this marked as Government Exhibit 5 for Identification.

(Government Exhibit 5 marked for Identification)

Q I show you Government Exhibit 5 for Identification

xxx

1 dwrf 2 am 1

James Bryant-cross

2 BY MR. WELLS:

APP 19

3 Q Ron gave you money?

4 A Right.

5 Q So you know Blackburn gave you money and Ron gave
6 you money?

7 A Yes.

8 Q When was the first time that Blackburn gave you
9 money?

10 A I think around the 13th of February.

11 Q How much did he give you at that time?

12 A \$300.

13 Q Was this an amount that you had asked him for?

14 A Pardon?

15 Q How did you arrive at this \$300 figure?

16 A This is what he gave me.

17 Q You didn't ask him for it?

18 A No, I did not.

19 Q Did you ask him for any money at all?

20 A No, I didn't ask him for any money at that time.

21 Q You didn't ask him for any at that time, you say?

22 A No.

23 Q Did there ever come a time when you asked him
24 for money?

25 A Yes, once.

ards James Bryant - cross

arrived at later on.

THE COURT: When did you arrive at that figure?

THE WITNESS: This was around the last of September. We had a few words and he agreed to give me \$3000 for the testimony.

Q He agreed to give you \$3000 for the testimony?

A Yes.

Q You had agreed he had given you \$3000 before?

A Right.

Q When he gave you \$3000 before, was that \$3000 one payment, one lump sum?

A No.

Q Over a period of time?

A Yes.

Q On these occasions when you were paid, was that paid by Blackburn?

A No all the time.

Q Who else paid you?

A Different agents.

Q Do you know their names?

A I know some of their first names. I don't know their complete names.

Q Could you give me the first names?

A Randy.

1 ards 1 W. Clark - direct

2 Q Now, when you got there, will you tell us what
3 happened?

4 A I got on 116th, I walked into the block.

5 Q I'm sorry, I didn't understand you.

6 A When I got to 116th I walked down in the block
7 of 116 and met Cody there.

8 Q Did you have a conversation with him?

9 A Yes, we did. I asked him to give me a piece
10 of heroin, an ounce of heroin. He told me, no --

11 Q I didn't get that, Mr. Clark.

12 A I asked Cody to give me an ounce of heroin and
13 he told me no, he wasn't doing anything. I asked have you
14 got it, he said he hasn't been doing anything.

15 Q Did you have any further conversation?

16 A When I asked him did he know anybody, he told
17 me no and I asked him do you have any quarters of heroin.

18 Q What?

19 A Did he know anywhere I could get some quarters
20 of heroin from. He told me, no.

21 So I kept telling him I want heroin to take back down
22 South, I need some quarters. Finally he told me to hold on.

23 Q What?

24 A Finally he told me to hold on and called this
25 fellow.

APP 22

730

1 ards 2 W. Clark - direct

2 Q Who?

3 A A fellow named Monk.

4 Q Where were you and Cody Griffin?

5 A Standing on the sidewalk of the curb of 116

6 Street.

7 Q Where on 116th?

8 A On the edge of the curb between Lenox and Seventh.

9 Q On the street?

10 A Yes.

11 Q You say he called someone named Monk?

12 A Yes.

13 Q Did he?

14 A Yes, he called Monk.

15 Q Where was Monk?

16 A About from here to that wall (indicating).

17 Q Did Monk do anything?

18 A Yes, Monk came over. Cody told Monk I told him

19 I had no quarters but that you all had some.

20 Q I'm sorry, Mr. Clark.

21 A He came over, Cody told him he had no quarters

22 but you all had some.

23 THE COURT: Cody told Monk he didn't have any

24 quarters but Monk had some; that it would be all right, is

25 that it?

APP 23

1 ards 3 W.Clark - direct

2 THE WITNESS: Yes.

3 MR. GARNETT: Thank you, your Honor.

4 Q So what happened next?

5 A I asked Cody if I could buy 30, I give him forty
6 dollars a quarter. He said I thought you want 50. I say
7 I do want 50 and I said \$40. Then he said it ain't my
8 business, I am not taking your business.

9 Q Who was talking?

10 A Cody, telling Monk.

11 Q So what happened next?

12 A I started talking price with Monk and \$40 a
13 quarter and he agreed to this.

14 I asked how long it would take to get it. He say 20
15 minutes, 20, 25 minutes. So he told me he had to get the
16 package and he stopped to talk to another fellow.

17 I told Cody, Cody, I don't like this, I got money in
18 my pocket.

19 Q Mr. Clark, slow up, please.

20 A He left.

21 Q Repeat that and go slowly.

22 A Yes. We agreed on a price.

23 THE COURT: Who is we?

24 THE WITNESS: Me and Monk.

25 Q What was that price?

APP 24

1 ards 10 W. Clark - direct

2 A In the back of my back.

3 Q How was it attached to your body?

4 A By tape.

5 Q After he turned on that device, what did you do?

6 A I got out of the car.

7 THE COURT: What?

8 THE WITNESS: Got out of the car. I walked down
9 the street.

10 Q What next?

11 A I walked down 116 Street and met Codell Griffin.

12 Q Did you have a conversation with him?

13 A Yes, I did.

14 Q Will you tell us what you said to him and what
15 he said to you?

16 A I still asked him about did he have any drugs.
17 He kept telling me no, he didn't have any.

18 I told him that I had a certain amount of money I
19 wanted to spend, I wanted to go back down South. He kept
20 saying he has none.

21 I asked where is that fellow I got the quarters from
22 the other day. He said he is somewhere. I asked, "Do you
23 know anybody who has quarters?"

24 He told somebody in the store, "Look outside and see
25 if Kenny is outside."

APP 25
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1 ards 11 W. Clark - direct

2 Q He told somebody? Do you know who he told?

3 A No, I don't know the fellow. The fellow said
4 no. So, man, I kept talking about how I am going down South.
5 Kenny shows up. He called Kenny over. He tells
6 Kenny --

7 THE COURT: Kenny?

8 THE WITNESS: Yes.

9 THE COURT: Who?

10 THE WITNESS: I don't know.

11 THE COURT: Just Kenny?

12 THE WITNESS: Yes.

13 Q Would you describe to us where he was, he mean-
14 ing Codell Griffin and where you were when you had this
15 conversation?

16 A Yes. Cody was inside of a store and I am out-
17 side on the street. He is inside. It is sort of got a
18 window like this in the street --

19 Q The store has a window like you can serve
20 patrons outside?

21 A Yes.

22 Q Where was Griffin?

23 A Inside.

24 Q Where were you?

25 A Outside.

APP 26
740

ards 12 W. Clark - direct

Q You say there was a time when Kenny came up?

A Yes.

Q Where was Kenny?

A Like standing next to me.

Q Next to you outside on the sidewalk?

A Yes.

Q Did you have any conversation with anyone at that time?

A Yes. Cody told Kenny I was wanting quarters and I was all right.

Me and Kenny walked away a few steps and he asked how did I want it.

Q Who asked you how many you want?

A Kenny.

Q Tell us about that conversation.

A So I asked him if I get a certain amount of quarters could I get them \$40 a quarter.

Q What?

A I asked him could I -- I want 75, could I get them for \$40 a quarter.

He told me wait a minute. He walked back to Cody and say something which I don't know what it was and came back to me.

THE COURT: Who is he?

ards 13

W. Clark - direct

741
APP 27

A Kenny. And told me to come on. So we walked a few steps down the block and he was talking on the stoop with the fellow.

Q Where?

A Walked up on the stoop and talked to a fellow.

Q He meaning Kenny walked up the stoop with another person?

A Walked up to the fellow on the stoop.

Q Who was that person?

A A fellow by the name of Gil.

THE COURT: G-i-l?

THE WITNESS: I guess it is.

Q Were you with Kenny at that time?

A No quite with him, no.

Q Did he and that other person have a conversation?

A Yes, they did.

Q Did you hear that conversation?

A No in the beginning, no.

Q Not in the beginning?

A No.

Q What happened after Kenny went to Gil?

A He called me over to where the two was standing. I went over. Kenny told me he say, "His man won't do it for \$40." He told me to wait a minute and they had a little

ards 14

W. Clark - direct

more discussion.

748

APP 28

Q Did you hear that?

A No. Then Kenny said, "All right, he will go \$40 but he only has 40 quarters."

Q What?

A He didn't have but 40 quarters.

Q He didn't have but 40?

A Yes.

Q What happened next?

A So I was trying to the price up on 40 quarters which I couldn't add that fast. That is when Gil and Kenny started counting.

Q What?

A Adding it up, \$40 for each quarter, how much would it be for the whole 40.

Q How much did that come out to?

A Sixteen hundred.

THE COURT: How much?

THE WITNESS: Sixteen hundred.

Q What happened after that?

A I told Kenny I didn't discuss the price with my partner, I will let him know. Kenny told me to take care of my business, so I left.

Q where did you go?

pgrf 20

Counts 3, 4 and 5 deal with the three specific distributions of heroin by Leander Clarke to Codell Griffin. In April, May and June of 1974. That is Leander's testimony. I won't repeat it.

Count 6 is in April of 1975, Codell Griffin distributed 200 quarters of heroin.

In '74 he said the attempted homicide, that he stopped selling heroin.

Now we are in May of '75 when Leander says he got out of jail after having been arrested the September before for selling heroin in Yonkers. Here is this particular count which refers to the distribution of Codell Griffin of 200 quarters in April of '75, sometime around Leander's Birthday.

Count 7 is in September of '75; Donna Forte is charged in Count 7 with distributing 50 quarter spoons. Again Leander's testimony, and the exhibits from the Western Union showing the monies and that portion of the exhibit which refers to the monies sent from October to December because the second part of the money that was sent from January and February of '76 refers to another heroin transaction.

ards 1

Then Count 8, which refers to December 16, an eighth kilogram of heroin. Kid's testimony that the package he had gotten from Cody, that he didn't fully pay for because it was bad.

Then Count 9, February 13, again the overt acts in substance refers to the specific violations and they are charged in the specific counts.

Again, February 13, Cody, Bill and Roy sold 100 quarter spoons, that is the first exhibit that we offered and we rely upon Kid's testimony and Sam's testimony as to what he saw.

Count 10 is the count that charges Cody Griffin and Boykin with distributing 29 quarters and again that is Country's testimony, the tape of the conversation he had with Cody, his identification of Monk, the statement by Codell Griffin that Monk was the person who joined the group and Count 11, the count charging Codell Griffin and Kenneth Ivery with distributing 40 quarter spoons of heroin on the 14th of July, 1976, when Cody called Kenneth Ivery over and the conversation Country is all right and that is Country's testimony and the photographs and Bob Jones and the other surveilling agents, and Count 12, the last count of the indictment is the charge that Ivery alone and, if you recall, there is no testimony that Country spoke to Cody

1 ards

2 concerning the second transaction on that date and for that
3 reason he is not charged in this count, only Ivery, with
4 distributing 79 quarters of heroin and that is Country's
5 testimony again.

6 I omitted referring to Count 2 of the indictment
7 and I will treat that last.

8 Now, at the beginning I ask you to consider
9 carefully and examine carefully the testimony of the three
10 government witnesses, that is, Kid, Leander and Country.

11 Mr. Stone, just as an aside, Mr. Stone made
12 reference in his cross-examination to Leander not paying
13 taxes on all the money he got and maybe I have the wrong
14 person, but some comment made about these persons not paying
15 taxes.

16 Make no bones about it, they told you they were
17 dope dealers, they sold dope and made money and lived well
18 on this money. They bought cars and did whatever they wanted
19 to do.

20 Certainly, for the purpose of this case, the
21 issue is not whether they paid taxes, the issue is whether
22 they sold heroin and that is exactly what they told you they
23 did.

24 And Mr. Stone also made reference, for example,
25 to Leander Clarke and of the fact that Clarke had children

APP 32

1 ards 3

W.Clark - direct

2

THE WITNESS: Yes.

3

MR. GARNETT: Thank you, your Honor.

4

Q So what happened next?

5

A I asked Cody if I could buy 30, I give him forty

6

dollars a quarter. He said I thought you want 50. I say

7

I do want 50 and I said \$40. Then he said it ain't my

8

business, I am not taking your business.

9

Q Who was talking?

10

A Cody, telling Monk.

11

Q So what happened next?

12

A I started talking price with Monk and \$40 a

13

quarter and he agreed to this.

14

I asked how long it would take to get it. He say 20

15

minutes, 20, 25 minutes. So he told me he had to get the

16

package and he stopped to talk to another fellow.

17

I told Cody, Cody, I don't like this, I got money in

18

my pocket.

19

Q Mr. Clark, slow up, please.

20

A He left.

21

Q Repeat that and go slowly.

22

A Yes. We agreed on a price.

23

THE COURT: Who is we?

24

THE WITNESS: Me and Monk.

25

Q What was that price?

1 dwrf 6

Clark-direct

2 A Kenny told me, "Yeah, man, I don't never put
3 the dope in my hand, would it be all right"? I say, "Yes."

4 Q So what happened after that?

5 A I gave Kenny the money. I pick the package up.
6 Kenny counted the money.

7 THE COURT: He gave Kenny the money, he picked
8 the package up and Kenny counted the money.

9 Q What did you do next?

10 A Well, I ask Kenny that we had the balance of
11 the package that said if I ask for it later on. He
12 said yes he would. So I told him I would be back that
13 night. And he said all right, so I left, walked down
14 116th Street and Lenox Avenue, met Agent Sales. I had
15 seen Codell before I got to the car, and I had told Cody
16 a fourth of a quarter was nothing to take down south.
17 Cody say, "That's you'all's business. I got nothing to
18 do with that."

19 THE COURT: Cody said what?

20 THE WITNESS: "You 'alls business. I don't got
21 nothing to do with it. Take care your own business."

22 And I walked on to the car.

23 Q You walked where?

24 A Lenox Avenue 117th Street to the Government
25 car, Randy Sales.

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1 pgrf 17

2 THE COURT: I heard what you said. I don't doubt
3 your good faith in saying it. I have discretion and
4 I will have to exercise that against you.

5 Excluded.

6 MR. GARNETT: Your Honor, may we have five
7 minutes, then. We do have some witnesses available.
8 We just need a few minutes.

9 (Recess.)

10 MR. GARNETT: Mr. Schmukler is in a similar
11 position as Mrs. Hines is. The Government -- the reason
12 I have asked for this additional argument is that I
13 planned for tomorrow morning to introduce testimony
14 from police officers and chemists concerning the
15 arrests, prior arrests, one in 1968 and one in 1971 of
16 the defendant Codell Griffin. This may be an appropriate
17 time to get a ruling on that so I can plan getting
18 witnesses if your Honor excludes that testimony.

19 Again the Government would offer the testimony
20 of the arresting police officers who arrested Codell
21 Griffin in 1968 and 1971. He was charged in 1968 with
22 possessing cocaine and in 1971 he was charged with possessing
23 heroin. He pleaded guilty in 1971 and received a one
24 year probationary sentence. But the crucial testimony
25 in each instance is that the defendant did have in his

APP 35

1 pgrf 18

2 possession cocaine in 1968 and 24 glassine bags of
3 heroin in 1971.

4 We would offer the testimony of those witnesses
5 to show similar acts as to defendant Codell Griffin.

6 THE COURT: Where were they?

7 MR. GARNETT: 116th Street -- one of them is
8 on 116th Street.

9 I don't have the copies of the police reports
10 in my basket at this time. Maybe Mr. Schmukler can help
11 us out. I turned this material over to him earlier.

12 MR. SCHMUKLER: I am digging for it right now.

13 (Pause.)

14 MR. GARNETT: I do believe one of those
15 arrests -- I'm not sure whether it was '68 or '71 --
16 occurred on 116th Street.

17 MR. SCHMUKLER: I can't represent precisely what
18 Mr. Garnett's witness would testify to. The conviction
19 resulted from this. The defendant is claimed to have been
20 in possession of 24 glassine bags of heroin. I think I
21 should point out that there is no contraband in this
22 case consisting of glassine bags of heroin. The only
23 testimony relating to that was the testimony that was not
24 introduced as a prior similar act but evidence designed
25 to show that a conspiracy existed from '71 to '75 by
showing that there was a method of distribution similar

ards 1

MR. GARNETT: I am not introducing the dispositions as to those cases and the propensity I think is established by this case here on trial. Clearly there is no extreme prejudice to this defendant as your Honor ruled with respect to the defendant Burnside.

THE COURT: In this case I will allow it --

MR. SCHMUKLER: Before you rule, Judge, can I add one further thing?

THE COURT: Yes.

MR. SCHMUKLER: In the instance of Mr. Burnside the ruling is correct, proper and the law and certainly whichever way you rule I recognize the Court of Appeals might say in this instance, they might say your Honor was wrong and let us assume it -- and I am not suggesting that you are, but let us assume. The way you are treating this subject now there is no doubt in my mind that you are thinking about it and you are trying to weigh one side and the other. I wouldn't be able to challenge that as an improper use of discretion.

THE COURT: You can always challenge it and maybe even successfully.

MR. SCHMUKLER: I don't know, Judge. But I do think as a practical matter, considering the evidence that the jury heard and the conversations between this party

pg 10

Boutineau-recross

APP 31

showed you, the piece of paper I just handed you?

A And pointed out the dates here.

Q But you have looked at it before?

A Yes.

Q Does it show a sentence of probation?

A Yes, at the top.

MR. SCHMUKLER: I have no further questions.

Your witness.

MR. GARNETT: Your Honor, I have an official certified court record concerning that case and I would like to offer it to the Court to take judicial notice of it as a certified document and offer it into evidence.

THE COURT: Any objection?

MR. SCHMUKLER: May I see what he is holding?

MR. GARNETT: The same copy I provided you with.

It includes a certified disposition of it, a certified affidavit filed by the police officer and a certified court record of the proceedings.

MR. SCHMUKLER: I will object to everything except the actual judgment itself. There is no relevance to the other documents.

THE COURT: Let me see it.

(Pause.)

THE COURT: In the light of the cross examination

APP 38

1 pgrf 7

2 What is "substantial?" No drug dealer, no alleged
3 drug dealer, will present every dollar earned for anyone's
4 review. To that extent you heard -- to just show you the
5 importance of this particular fact that the Government
6 must prove to your satisfaction -- there were 12 witnesses,
7 including agents and informants, chemists and police
8 officers, who testified about the specific narcotics
9 violations in this case.

10 Let me take an aside: Police Officer Boutineau
11 testified that in 1971 he arrested Codell Griffin with
12 24 glassine bags of heroin. If you will recall Mr.
13 Fleming, the chemist, testified that each one of those
14 bags had approximately a grain in it. Police Officer
15 Boutineau said in his estimation they were \$5 bags.

16 In 1967 they were \$2 bags.

17 In 1971 they were \$5 bags.

18 In 1976 they were \$35, \$40 and \$50 bags.

19 But of the 47 witnesses 12 were for narcotics.
20 The remainder were for the Government to meet its burden
21 under Count 2 on the derivation of substantial income
22 and resources.

23 The Government submits to you now that the five
24 or more persons requirement under the statute has been
25 satisfied, and I particularly draw your attention to all

1 The Government, through one of its witnesses,
2
3 will offer testimony --

4 MR. SCHMUKLER: Judge, we haven't even read it.
5 We don't even know what it is about. We are in no position
6 to have argument on this thing.

7 MR. GARNETT: I just passed out so if there is
8 argument they would have had an adequate time to prepare
9 and I wanted to state what the Government intended to do
10 so there would be an adequate time to respond.

11 The Government's third witness would testify
12 that the defendant Codell Griffin was engaged in heroin
13 transactions prior to September 1, 1971 the date in the
14 indictment. The witness will further testify that there
15 were further persons who occupied the same position as
16 he with respect to Mr. Griffin in the sale of heroin,
17 I believe beginning in 1967 through 1969. It is the
18 Government's position that the conspiracy itself existed prior
19 to the date in the indictment and there will be proof
20 submitted to that effect.

21 The factual background is not in the memorandum,
22 merely the law. I wanted to advise the Court that under
23 the authorities there the Government can submit proof
24 that the conspiracy did exist prior to the date in the
25 indictment.

1 ards

2 On that memorandum of law that the government
3 submitted, it seems to me that the government is correct.
4 Anybody have any other views?

5 MS. HINES: Which memo was that?

6 THE COURT: The one Mr. Garnett distributed just
7 before the close of the session on Thursday on prior acts.

8 MR. SCHMUKLER: Your Honor, I don't feel able
9 to respond because I don't know how the government intends
10 to offer that, through what witness and whether in the form
11 of exhibits or oral testimony.

12 MR. GARNETT: I thought I advised the Court on
13 Thursday and I will make it clear now the government's
14 third witness, one William Clark, will testify that he began
15 selling heroin back in 1967 and that he began selling heroin
16 for the defendant Codell Griffin and continued to sell
17 heroin until approximately mid-1960 and then in 1969 he be-
18 came an informant for the government.

19 His testimony as to his prior association with
20 Mr. Griffin and others from 1967 on the government submits
21 establishes that the conspiracy as charged in this indict-
22 ment began sometime before the date in the indictment and
23 continued throughout although the members of the conspiracy
24 have been changed.

25 MR. SCHMUKLER: If the government proof establishes

1 ards
2 that it is the same conspiracy that would be one situation.
3 It is a situation markedly different if it is a totally
4 different conspiracy. The proof would fall in the category
5 of other similar acts and as to that point I believe the
6 Court would have to resolve whether there are issues of
7 intent and knowledge and, number three, other issues that
8 the prior similar acts doctrine would tend to make such
9 proof admissible under it.

10 I don't think that the issues have yet been
11 brought out.

12 THE COURT: The government obviously offers
13 proof on the theory that it is the same conspiracy and I
14 will rule on that.

15 MR. WELLS: On the point made by Mr. Garnett
16 where he made the statement others than Codell Griffin,
17 is he saying that the others Clark will testify to were part
18 of some conspiracy prior to 1971 including any other defend-
19 ant presently on trial?

20 MR. GARNETT: No, the government does not submit
21 that any of the defendants here on trial were in 1967 partici-
22 pants in this conspiracy.

23 THE COURT: The government position is that the
24 conspiracy is an ongoing one originated by Codell Griffin
25 and his lieutenants changed from time to time.

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dwrif 9

Clark-direct

Q When did you first meet Cody?

A In the early '60s.

Q Early when?

A Early '60s.

Q 1960s?

A Yes.

MR. SCHMUKLER: Judge, I object, the witness
said early '60, not '60s, early '60.

THE COURT: 1960. What are you objecting about?

MR. SCHMUKLER: Because Mr. Garnett corrected it
to '60s.

THE COURT: He said --

Q Did you say '60, or '60s?

A '60s.

THE COURT: 1960 or some other year?

THE WITNESS: '60s, later in '60.

THE COURT: What?

THE WITNESS: In the '60s.

THE COURT: In the '60s.

Q Now, I direct your attention to the summer of
1967 and I ask you, did you, did there come a time when
you began selling heroin?

A Yes.

Q When was that?

dwrf 10

Clark-direct

70L
APP 43

A Around September.

Q How did you come to begin selling heroir?

A Through a friend of mine named Red Turner.

THE COURT: Friend of yours, what?

THE WITNESS: Named Red Turner.

Q How did that happen?

What did you do?

A Well, I asked him would he talk to his boss,
Cody, would he give me a job working to sell heroin.

He said yes.

Q Mr. Clark, again, keep your voice up so that
everyone can hear you and would you tell us --

A I asked Mr. Turner that would he speak to Cody
about giving me a job that --

MR. SCHMUKLER: I object, and move that it be
stricken.

THE COURT: Overruled.

Q Now, when you had this conversation with Red
Turner, where were you?

A On 129th Street, Lenox Avenue, Blue Cup Bar.

Q Blue Cup Bar, is that what you said?

A Yes.

Q Now, what did you say to Red Turner and what
did he say to you?

1 pgrf 4

2 example may have been unfamiliar with what happened.

3 I will attempt to explain all of this to you as I continue
4 my summation.

5 This case is a big picture puzzle and if
6 you function on that level maybe I can for your satisfaction
7 pull the pieces of those 47 witnesses together to present
8 a total picture because all 47 people could not testify
9 at one time. It is somewhat difficult for you to
10 piece all the puzzle together in one fell swoop. That is
11 why I am here to sum up for you.

12 Some of these pieces were unrelated to others
13 but during the course of my summation I hope to make it clear,
14 that each piece is a part of the big puzzle.

15 As briefly as I can and it may be somewhat
16 protracted I will go through the facts as you heard it
17 testified to from the various witnesses.

18 In the summer of 1967 Red Turner, and a person
19 named Jimmy were selling \$2 bags of heroin for Codell
20 Griffin. If you will recall Country testified that he met
21 Codell Griffin sometime in the early 60s but in '67 after
22 having been released from prison he asked Red Turner to
23 ask Codell Griffin if he could have a job.

24 A few days later Red Turner introduced Country
25 to Codell Griffin in the Blue Cup Bar somewhere in the

APP 45

1 pgrf 5

2 vicinity of 129th Street.

3 At that time Cody asked Country how many bundles
4 he could sell and Country attempted to explain to you what
5 a bundle was.

6 A bundle was 15 \$2 bags.

7 At that time Country told Cody he could probably
8 do 15 bundles but he would take a chance on 10 and for
9 two weeks Country sold 10 bundles of 15 \$2 of heroin
10 to junkies, addicts, other uses, in and around 129th Street
11 in Manhattan.

12 After about two weeks Country told you he
13 graduated from 10 bundles to 20.

14 He said during the course of his selling
15 these bundles he would give \$20 per bundle to Red Turner and
16 he would keep \$10 for himself.

17 If you will recall the first batch of bundles
18 that he received he sold them and gave \$200 to Jimmy in the
19 Blue Cup Bar and Jimmy walked over to Red Turner and gave
20 Red the \$200.

21 As I said, after about two weeks he began
22 selling 20 bundles a day and if you will recall I asked him
23 how did he receive his heroin and in addition to receiving
24 it in the Blue cup Bar and other places, hallways, et
25 cetera, he said that he and Red generally would go to

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1 pgrf 6

2 Codell Griffin's house on West 129th Street daily, every
3 morning, six or seven days a week, go in and Red
4 Turner and Cody Griffin would go to a back room while he
5 stayed in the kitchen and they would come back and Red
6 Turner would give him bundles.

7 Country testified that there were other persons
8 who were selling these bundles for Codell Griffin at that
9 time, and I am particularly addressing myself to the
10 summer of '67 to the summer of '68, and the reason I set
11 that period out is because if you will recall Country
12 testified that at some point that Jimmy ran off with his
13 money and committed a robbery and was arrested in '68.

14 Some of those other persons who were selling
15 narcotics during that period was a person named Skeeter
16 and a person named Melvin and of course Jimmy and Red
17 Turner.

18 He said he sold heroin in this fashion for about
19 one year.

20 Two months before he was arrested for that
21 robbery in 1968 Country told you he began selling heroin
22 on his own, and that is in essence he cut out the
23 commission that was paid to Codell Griffin through Red
24 Turner by earning most of that money himself.

25 How did he do it? He said he purchased on three

APP 47

1 pgrf 7

2 occasions one ounce of pure heroin and if I recall
3 correctly and if you recall, he said that the first ounce
4 he purchased he purchased for \$500 but before that
5 purchase, let me back up a moment.

6 Before that purchase he advised Codell Griffin
7 he was going to go out on his own because he was not
8 making enough money by selling it for Cody. Cody
9 induced him, attempted to induce him, to stay with
10 Cody, to continue working for him and in the course of that
11 inducement he gave him two coats to keep him working, but
12 Country still desired to go out on his own and Cody told him,
13 "If you are going to go out on your own, stay in the family,
14 so to speak, purchase your pure heroin from me," and
15 subsequent to that Country purchased his first ounce of
16 pure heroin.

17 You heard his description of how you cut heroin.
18 I submit to you that it was not pure heroin if it could
19 only be cut four or five times which is what he testified
20 he did.

21 But he purchased his first ounce and Cody provided
22 him with the mannita and the quinine to use in cutting
23 the ounce that he had for his own distribution, and he paid
24 Codell Griffin \$500.

25 Country described to you how he cut this heroin

APP 48

1 pgrf 8

2 and if you will recall he said he took three quarter
3 spoons of mannita and two quarter spoons of quinine and
4 added it to one quarter spoon of the heroin.

5 Before he said that he said he would divide
6 the ounce of heroin into five quarter spoons.

7 If you will recall, Country identified a set of
8 spoons, measuring spoons, and picked out the large spoon
9 as the one that was used to cut the heroin.

10 He said that after he took one part, one of the
11 five parts of the heroin, mixed it with three parts of mannita
12 and two parts of quinine he would get 30 bundles.

13 Again, recall that each bundle had 15 \$2 bags and
14 he would sell these bundles for \$30. If you take the
15 calculations you come up with approximately \$900 for each
16 quarter spoon of heroin, which was cut after it was
17 final cut.

18 If you take ach part, five parts of that, that
19 was approximately \$4,500 for one ounce of heroin. He
20 would receive approximately \$4,500 after having only paid
21 \$500 to Codell Griffin. That is \$4,000 profit.

22 He said he did this three times, that is he
23 purchased an ounce three times from Codell Griffin,
24 but on the third ounce, if you will recall, he said that
25 Jimmy ran off with his ounce after it had been cut up and

1 pgrf 9

2 and because he didn't have any money he committed the robbery
3 of a liquor store and was arrested shortly thereafter and
4 was in jail when he contacted the Drug Enforcement
5 Administration and became an informant.

6 In my opening statement I referred to a Horatio
7 Alger story for Codell Griffin. The reason I refer to that,
8 you heard during the course of the case that Codell Griffin
9 sometime in the '60s became a permanent resident of
10 New York and you heard Country saying that he was selling
11 \$2 bags of heroin at least as early as 1967 and through
12 1968. But you also heard Mr. Barrow testify that sometime
13 in the late '60s Codell Griffin worked in his grocery
14 store sporadically for about a year and you heard
15 that also --

16 MR. SCHMUKLER: Objection. There is no testimony
17 of sporadic employment.

18 THE COURT: I don't remember but he worked there.

19 MR. GARNETT: He worked there for about a year.

20 On cross examination I asked Mr. Barrow if in my office --

21 MR. SCHMUKLER: I object to that.

22 MR. GARNETT: It is material as to what came
23 from the stand. You will recall that he said he had
24 worked two or three months over a period of a year.

25 MR. SCHMUKLER: I object to that. That is not

1 prrf 10

2 the testimony.

3 THE COURT: The jury will remember the testimony.

4 MR. GARNETT: In any event Jacqueline Martin
5 also testified that in the late '60s she recalled Codell
6 Griffin working in the grocery store and she had seen him
7 there.

8 But the point is this: In 1967-68, Codell
9 Griffin was selling \$2 bags of heroin and in 1975, '74, he
10 was selling \$50 bags, quarters.

11 And also in referring to the Horatio Alger aspect
12 of this case, you will recall Mr. Griffin's tax returns
13 in '70 and '71 and the small income that was declared
14 and you will recall the '73 and '74 returns when substantial
15 income was declared.

16 There are other facts and I will get to them.

17 But this story changes and a more formal structure
18 appears in Codell Griffin's network of distribution.
19 Again in the late '60s it was by the use of persons to
20 sell on the street who would go to his home, pick up the
21 narcotics that he would speak with personally about selling
22 narcotics.

23 In the 1970s it shifts from 129th Street and Mr.
24 Griffin's home at that time to 116th Street, and there, if
25 you will recall the testimony, Codell Griffin rarely spoke

1 ards

2 case, as you say from 1900 or whatever time it was that
3 predates the indictment, it would seem there are problems
4 really of interruption of the conspiracy, termination of it,
5 whether one day or one year or 10 years, say in 1900 to 1950
6 and from 1950 to on to the present with one same individual,
7 it seems the government would have the responsibility of
8 showing there was an ongoing continuity of that conspiracy
9 rather than just the identification of a party.

10 MR. SCHMUKLER: At least the remaining members
11 who are participants until the termination --

12 THE COURT: No, that is not true. There could
13 be only one continuing member throughout and a change in
14 membership the rest of the time. Once it starts it is pre-
15 sumed to continue.

16 We are talking about something in the future,
17 let's have the jury.

18 I will say on the record that Alternate No.3
19 reported in with an abscess and talked to the clerk and
20 satisfied the clerk that it was legitimate and I waived
21 producing the medical proof so we will proceed now with
22 three alternates.

23 (Jury present)

24 J A M E S W. B R Y A N T, resumed.

25 THE COURT: I will say good morning, ladies

DIRECT EXAMINATION

BY MR. GARNETT:

Q You are not Mr. Granger?

A That is the corporate name of my business.

Q You are the gentleman to whom I have spoken?

A Yes.

Q You did identify yourself to me as Benjamin Granger, did you not, when I spoke with you?

A I think I told you I was Mr. Barrow. That was the name.

Q How are you employed, sir?

A I have my own business.

Q What is your business?

A Supermarket.

Q What is the name of your supermarket?

A Granger's supermarket.

Q How long have you owned that supermarket?

A Since 1964, April.

Q Did there come a time when you employed a person by the name of Codell Griffin?

A Yes.

Q Would you tell us if you recall when that was?

A '68 or '69. I don't remember the exact year.

Q How long did that person stay in your employ?

1 ards 2

L.Clarke - direct

2 A I was getting them and giving them away. I
3 wasn't on the street, I was giving them to other people.

4 THE COURT: Were you in jail?

5 THE WITNESS: Yes -- no, sir, I was free.

6 THE COURT: You were free?

7 THE WITNESS: Yes.

8 THE COURT: Why weren't you on the street?

9 THE WITNESS: Because the case I just had just
10 got dismissed.

11 Q So how was heroin being sold for you after your
12 release?

13 A Through other people.

14 Q What other people?

15 A Friends of mine.

16 Q Do you know who they are?

17 A Yes, sir. A fellow by the name of Chucky. I
18 had Robert, a fellow, Robert, working for me.

19 Q Where were you getting the heroin from then?

20 A From Codell Griffin.

21 Q Mr. Clarke, I direct your attention to April of
22 1974.

23 A Yes, sir.

24 Q I ask you did there come a time when you had a
25 conversation with one Harold Torrell concerning narcotics?

ards 3 L.Clarke - direct

430

A Yes, sir.

Q Do you recall that conversation?

A Yes, sir.

Q As a result of that conversation did there come
a time in April 1974 when you spoke with Codell Griffin?

A Yes, sir.

Q Will you tell us where that conversation took
place?

A On 116 Street between Lenox and Seventh.

Q Was anyone present during that conversation?

A No, sir.

Q Would you tell us what he said to you and what
you said to him?

A He said, "Hey, man, do you have" --

THE COURT: Just raise your voice.

A He says, "Hey, man, do you have any, do you know
anybody got anything, right?"

So I says --

Q What did you understand him to mean by anything?

A Narcotics, heroin.

THE COURT: Go ahead.

A I said, "I don't know. I will check, I will
find out for you. I come back through here later on."

He said, "Okay."

APP 55

dwrf 7 Blackburn-direct

about Mr. Bryant now.

THE COURT: I thought he said Mr. Clark.

MR. MASON: I withdraw the objection then.

THE COURT: Government counsel suggests you
call the people by the names you are used to calling them.

THE WITNESS: Yes, sir.

Q Now, on December 30th, how did you come to
meet Kid?

A Through Mr. Clark. I, on December 30th I made
arrangements with Mr. Clark that we would again go
to West 116th Street to purchase two ounces of pure
heroin from Codell Griffin.

MR. SCHMUKLER: Your Honor, I am going to
object and move that be stricken. Nothing more than
statements of the operation of their mind.

THE COURT: I don't know why you are objecting.
That is what your opening was, that that is what they
did. Now he is proving your opening. Why are you
objecting?

Proceed.

A All right, we went to 116th Street where we
parked the car and entered 117 West 116th Street where
I had a conversation with Real Thing and with Bubby
about buying heroin.

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APP 56

1 ards 13

W. Clark - direct

2 A Kenny. And told me to come on. So we walked
3 a few steps down the block and he was talking on the stoop
4 with the fellow.

5 Q Where?

6 A Walked up on the stoop and talked to a fellow.

7 Q He meaning Kenny walked up the stoop with another
8 person?

9 A Walked up to the fellow on the stoop.

10 Q Who was that person?

11 A A fellow by the name of Gil.

12 THE COURT: G-i-l?

13 THE WITNESS: I guess it is.

14 Q Were you with Kenny at that time?

15 A No quite with him, no.

16 Q Did he and that other person have a conversation?

17 A Yes, they did.

18 Q Did you hear that conversation?

19 A No in the beginning, no.

20 Q Not in the beginning?

21 A No.

22 Q What happened after Kenny went to Gil?

23 A He called me over to where the two was standing.

24 I went over. Kenny told me he say, "His man won't do it
25 for \$40." He told me to wait a minute and they had a little

1 ards 1 W. Clark - direct

2 Q Now, when you got there, will you tell us what
3 happened?

4 A I got on 116th, I walked into the block.

5 Q I'm sorry, I didn't understand you.

6 A When I got to 116th I walked down in the block
7 of 116 and met Cody there.

8 Q Did you have a conversation with him?

9 A Yes, we did. I asked him to give me a piece
10 of heroin, an ounce of heroin. He told me, no --

11 Q I didn't get that, Mr. Clark.

12 A I asked Cody to give me an ounce of heroin and
13 he told me no, he wasn't doing anything. I asked have you
14 got it, he said he hasn't been doing anything.

15 Q Did you have any further conversation?

16 A When I asked him did he know anybody, he told
17 me no and I asked him do you have any quarters of heroin.

18 Q What?

19 A Did he know anywhere I could get some quarters
20 of heroin from. He told me, no.

21 So I kept telling him I want heroin to take back down
22 South, I need some quarters. Finally he told me to hold on.

23 Q What?

24 A Finally he told me to hold on and called this
25 fellow.

ards 3

W.Clark - direct

THE WITNESS: Yes.

MR. GARNETT: Thank you, your Honor.

Q So what happened next?

A I asked Cody if I could buy 30, I give him forty dollars a quarter. He said I thought you want 50. I say I do want 50 and I said \$40. Then he said it ain't my business, I am not taking your business.

Q Who was talking?

A Cody, telling Monk.

Q So what happened next?

A I started talking price with Monk and \$40 a quarter and he agreed to this.

I asked how long it would take to get it. He say 20 minutes, 20, 25 minutes. So he told me he had to get the package and he stopped to talk to another fellow.

I told Cody, Cody, I don't like this, I got money in my pocket.

Q Mr. Clark, slow up, please.

A He left.

Q Repeat that and go slowly.

A Yes. We agreed on a price.

THE COURT: Who is we?

THE WITNFSS: Me and Monk.

Q What was that price?

74D

APP 59

1 ards 6 W. Clark -direct

2 A After Monk left?

3 Q Yes.

4 A Walked to the other side of the avenue on 116,
5 walked down to 117 and got in the government car with Randy
6 Sayles.

7 Q Did there come a time when Monk returned?

8 A Yes.

9 Q Will you tell us when that happened?

10 A About 30 minutes later he came back.

11 THE COURT: 30 minutes later?

12 THE WITNESS: Yes, he came back.

13 A I was still on the corner of 116 and Lenox Avenue.
14 He come toward me from Seventh Avenue, so he put his hand
15 out like this, telling me to come on.

16 So I walked up to him. He says, "Sorry it took so
17 long but they was in the mill cutting it up. That is why
18 I took so long getting back."

19 He said he couldn't get 40 "I got 29 for you."

20 So we walked in the hallway, he gave me the package
21 and I gave him the money.

22 Q How much money did you give him?

23 A I don't recall now. I can't recall really now.

24 Q After you received the quarters what did you do?

25 A I left the hallway, walked down 116 to Lenox

ards 12 W. Clark - direct

Q You say there was a time when Kenny came up?

A Yes.

Q Where was Kenny?

A Like standing next to me.

Q Next to you outside on the sidewalk?

A Yes.

Q Did you have any conversation with anyone at that time?

A Yes. Cody told Kenny I was wanting quarters and I was all right.

Me and Kenny walked away a few steps and he asked how did I want it.

Q Who asked you how many you want?

A Kenny.

Q Tell us about that conversation.

A So I asked him if I get a certain amount of quarters could I get them \$40 a quarter.

Q What?

A I asked him could I -- I want 75, could I get them for \$40 a quarter.

He told me wait a minute. He walked back to Cody and say something which I don't know what it was and came back to me.

THE COURT: Who is he?

1 ards 13 W. Clark - direct

2 A Kenny. And told me to come on. So we walked
3 a few steps down the block and he was talking on the stoop
4 with the fellow.

5 Q Where?

6 A Walked up on the stoop and talked to a fellow.

7 Q He meaning Kenny walked up the stoop with another
8 person?

9 A Walked up to the fellow on the stoop.

10 Q Who was that person?

11 A A fellow by the name of Gil.

12 THE COURT: G-i-l?

13 THE WITNESS: I guess it is.

14 Q Were you with Kenny at that time?

15 A No quite with him, no.

16 Q Did he and that other person have a conversation?

17 A Yes, they did.

18 Q Did you hear that conversation?

19 A No in the beginning, no.

20 Q Not in the beginning?

21 A No.

22 Q What happened after Kenny went to Gil?

23 A He called me over to where the two was standing.

24 I went over. Kenny told me he say, "His man won't do it
25 for \$40." He told me to wait a minute and they had a little

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APP 62

1 ards 14 W. Clark - direct
2 more discussion.

3 Q Did you hear that?

4 A No. Then Kenny said, "All right, he will go
5 \$40 but he only has 40 quarters."

6 Q What?

7 A He didn't have but 40 quarters.

8 Q He didn't have but 40?

9 A Yes.

10 Q What happened next?

11 A So I was trying to the price up on 40 quarters
12 which I couldn't add that fast. That is when Gil and Kenny
13 started counting.

14 Q What?

15 A Adding it up, \$40 for each quarter, how much
16 would it be for the whole 40.

17 Q How much did that come out to?

18 A Sixteen hundred.

19 THE COURT: How much?

20 THE WITNESS: Sixteen hundred.

21 Q What happened after that?

22 A I told Kenny I didn't discuss the price with my
23 partner, I will let him know. Kenny told me to take care
24 of my business, so I left.

25 Q Where did you go?

APP 63

1 dwrf 2 Clark-direct

2 A The drugs.

3 Q And what happened next?

4 A He told me to come on. Walk across the street,
5 me, him and Gil, and into the hallway. Me and Kenny
6 stand downstairs back of the hallway, Gil went upstairs
7 and brought the package back down about two minutes later
8 to me.

9 Q I'm sorry. What happened next?

10 A Me and Kenny stay in the back of the hallway
11 by the staircase. Gil went upstairs, got the package,
12 came back down about two minutes later. And Kenny
13 tell me that he don't put no dope in the hand, could
14 I put it down the steps, so I say yes.

15 So Gil walks down the hallway.

16 Q Gil said what?

17 A He say he don't put the dope in nobody's hands.
18 Can he put it on the steps.

19 He didn't put the dope in nobody's hands, would
20 it be all right to put it down the steps.

21 JUROR NO. 2: I didn't hear that.

22 THE COURT: Wait a minute, Mr. Reporter.

23 MR. RIVERS: Apparently from the testimony of
24 the witness --

25 THE COURT: I asked the reporter, I didn't ask you.

1 dwrf 6 Clark-direct

2 A Kenny told me, "Yeah, man, I don't never put
3 the dope in my hand, would it be all right"? I say, "Yes."

4 Q So what happened after that?

5 A I gave Kenny the money. I pick the package up.
6 Kenny counted the money.

7 THE COURT: He gave Kenny the money, he picked
8 the package up and Kenny counted the money.

9 Q What did you do next?

10 A Well, I ask Kenny that we had the balance of
11 the package that said if I ask for it later on. He
12 said yes he would. So I told him I would be back that
13 night. And he said all right, so I left, walked down
14 116th Street and Lenox Avenue, met Agent Sales. I had
15 seen Codell before I got to the car, and I had told Cody
16 a fourth of a quarter was nothing to take down south.
17 Cody say, "That's you'all's business. I got nothing to
18 do with that."

19 THE COURT: Cody said what?

20 THE WITNESS: "You 'alls business. I don't
21 nothing to do with it. Take care your own business."

22 And I walked on to the car.

23 Q You walked where?

24 A Lenox Avenue 117th Street to the Government
25 car, Randy Sales.

APP 65

dwrf 10 Clark-direct

Q All right.

A I asked Cody, "Where was you?"

Cody said he hadn't seen him. And I asked him did he have the balance of the package? And he said, "Yeah."

I asked him how many did he have?

He said, "What? Things?"

I say, "Yeah."

He said, "How many you wanted?"

I say, "80."

He told me "Wait a minute."

Q Who is --

THE COURT: Who is this you are talking to?

THE WITNESS: Kenny.

A So he walks away from me, goes down to the same stoop, Gil was there, too. Talk to Gil. Come back to me. Say, all right, he going to get it.

So we waited, we talked, so Kenny asked me how was that thing I got this morning? I say it was all right.

"You know I had two dope fiends test it for me," I say, "on down south."

Q You said -- I'm sorry.

A He asked me how was the package I got this

APP 66

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dwrfl 12 Clark-direct

Then all he said, told me walk on with him to the stoop where Monk was. So we walks in the hallway, Monk goes upstairs, come back down shortly. Tells Kenny there is no lights in the house. He have to go to the store and get some candles. So Monk walks out and Kenny say, "Come on, let's get out of the hallway."

So I say, "Yeah, let me get out of this hallway."

APP 67

ards 1 W.Clark - direct

2 Q What? I am sorry.

3 A He said, "Let me out of the hallway."

4 THE COURT: Get out of the hallway?

5 THE WITNESS: Yes. He walked out on the stoop.

6 He goes to the store to get the candles, comes back, goes
7 into the hallway, goes upstairs.

8 Kenny tells me to come on. He goes in the back
9 of the hallway. Two or three minutes later comes down with
10 the package.

11 Q What happened next?

12 A He say, "Can you put it on the stoop?" I said,
13 "All right." So Gil walked out, stay on the stoop. I give
14 Kenny the money and Kenny comes out. I pick up the bag and
15 we talk about what we are doing in the future.

16 Q What was the package you got?

17 A The day I am talking about now?

18 Q Yes.

19 A 79.

20 Q 79?

21 A Quarters.

22 Q Do you recall how much money you gave him?

23 A Yes.

24 Q How much?

25 A Thirty-one hundred.

1 pgrf

2 That is a consideration as to whether he should have
3 been severed -- not whether he was guilty but whether
4 he would have been convicted.

5 One of the things, maybe we should try him
6 alone. It would only take a day or two.

7 However, I am not deciding this today. I am
8 putting these thoughts out because the Appellate Court
9 seems to think the judges views on these points are
10 important. Why they should be is not altogether clear.

11 MR. GARNETT: It is clear from the acquittals
12 of the three defendants and the acquittals of the
13 Defendant Codell Griffin with respect to certain counts
14 that this jury soundly rejected the uncorroborated
15 testimony of the informants, all three of them. But
16 with respect to the convictions of Codell Griffin
17 and Kenneth Ivery on those occasions which occurred
18 in July, aside from the testimony of the informant,
19 the only justification in the record would be the photo-
20 graphs, would be the surveillance of Bob Jones and other
21 agents of a person, the beard, et cetera, and the tape
22 itself.

23 THE COURT: There is no question in my mind
24 that the verdict is supported by the evidence. There is
25 no question about that. There is not much question in my

1 ards

2 If two or more persons, any two, conspire to violate a
3 statute of the United States, and one or more of such
4 persons does an act to further the object of the conspiracy,
5 all shall be guilty of the crime of conspiracy.

6 You can readily see that there are three ele-
7 ments of the crime, each of which must be established to
8 your satisfaction beyond a reasonable doubt:

9 First, there has to be a conspiracy;

10 Second, the object of the conspiracy has to
11 be to violate a statute of the United States. In this
12 particular case, of course, the statute of the United States
13 claimed to have been violated is the one forbidding the
14 distribution of heroin or the possession of heroin with
15 intent to distribute it.

16 Thirdly, one or more of the conspirators has
17 to do something to effect such unlawful objective.

18 What, then, is a conspiracy? A conspiracy in
19 ordinary layman's language is no more or less than a common
20 undertaking entered into between two or more persons to
21 achieve some unlawful objective.

22 We are always in our daily lives watching
23 people engage common undertakings. If three of you should
24 agree to have lunch together and send one of you ahead to
25 the restaurant to reserve a table and put in the orders,

1 ards

2 the three of you would be engaged in a common undertaking.
3 A common undertaking only becomes a conspiracy, however, if
4 the objective is unlawful.

5 You will recollect that it is the government's
6 contention that Codell Griffin was the organizer and principal
7 figure in the conspiracy charged. Your first task, then,
8 is to determine whether Codell Griffin was engaged with one
9 or more persons (whether or not on trial before you) in a
10 common undertaking to possess and distribute heroin.

11 Now, in order to conclude that the defendant
12 Codell Griffin was engaged in such a conspiracy, you must
13 be satisfied beyond a reasonable doubt that he knowingly and
14 wilfully associated himself with others for the express
15 purpose of distributing heroin within the United States,
16 knowing such conduct to be in violation of the laws of the
17 United States.

18 If you conclude such knowing and wilful
19 conspitorial conduct to have been established on the part
20 of Codell Griffin, you will next consider whether Codell
21 was engaged in one single enterprise during the entire period
22 covered by the evidence which has been laid before you.
23 The reason you must consider this is that such is the charge
24 of the indictment, and under our law where a single conspiracy
25 is charged, a person cannot be convicted upon proof of a

APP 71

2433

1 ards

2 series of separate conspiracies.

3 It is the government's theory that the con-
4 spiracy it claims to have established was a continuing one
5 because Codell was at all times its guiding hand regardless
6 of whether his associates or employees may have changed from
7 time to time, and that the objective of the enterprise has
8 always been the distribution of heroin in the general manner
9 described. That is the government's contention, Codell was
10 the continuing factor throughout the conspiracy, the objective
11 was the same and the government claims it doesn't make any
12 difference whether the persons changed from time to time,
13 his associates.

14 Now, this position that I have just outlined,
15 if established to your satisfaction, you will be justified
16 in finding one single conspiracy. However, before you may
17 convict Codell Griffin, you must be satisfied that the
18 government has established this contention beyond a reason-
19 able doubt.

R2 20 If you are satisfied such a conspiracy existed
21 and that Codell was a part of it, you will consider whether
22 an overt act was committed in furtherance of the conspiracy.
23 It is a peculiarity of the law of conspiracy that mere
24 agreement is no offense. Something has to be done by some-
25 body in furtherance of the conspiracy. Now, the indictment

1 ards

2 lists 20 such overt acts, and I will discuss them in greater
3 detail later on and you must find that at least one of those
4 acts was performed by a person mentioned in one of these
5 paragraphs, (the Court holding up the indictment for the jury
6 to see) and it was performed in furtherance of the conspiracy
7 alleged in the indictment.

8 To summarize then, with respect to the defendant
9 Codell Griffin, if you find that he wilfully and knowingly
10 engaged in the conspiracy alleged in the indictment, and that
11 one of the overt acts named in the indictment was performed
12 in furtherance of that conspiracy, you may convict him of the
13 crime of conspiracy charged in the first count of the indict-
14 ment.

15 Now, under the government's theory, none of the
16 defendants could be guilty of conspiracy unless Codell Griffin
17 is so guilty. So, if you find him not guilty, that ends your
18 labors so far as concerns the conspiracy count.

19 If, however, you find Codell Griffin guilty, you
20 should then consider the guilt or innocence of each of the
21 other defendants, taking each separately, of the crime of
22 conspiracy.

23 A conspiracy, obviously, does not have to be in
24 writing and does not have to have any particular formality
25 attached to it. Nor does a person have to go through any
formality to join a conspiracy. A conspiracy is, as I have

1 ards 15 James Bryant - direct

2 walk away. Cody said, "I don't know what you are talking
3 about."

4 Q Did Blackburn say anything to Cody at that time?

5 A He just, he said, he wanted to know what the
6 strength of it is and what it will take.

7 Cody said, "Whatever you want to know you find out
8 from him", and walked off.

9 Q What did you and Blackburn do?

10 A We went back to the car and I waited there a
11 minute or two, talked with Sam, went back across the street
12 and I spoke with Cody.

13 Cody said, "If he wants it get the money and hold on
14 to it. Somebody will meet you and give you the package."

15 Q Did he say who would meet you and give you the
16 package?

17 A Yes, Tim.

18 Q Tim?

19 A Yes.

20 Q So what happened after that conversation with
21 Cody?

22 A After that conversation Cody and Tim left the
23 block and I went back to the car, sit in the car and shortly
24 thereafter Dickey Diamond came over to the car and told me
25 to go in the alley.

APP 74

dwrf 19

J. W. Brent-direct

67

A Gypsy.

Q Did there come a time when you became involved in narcotics activity in New York?

A Yes.

Q Would you tell us when and how that happened?

A I was around June 17, 1975. It was at 117 116th Street.

Q All right. What happened?

A Well, I stayed there a few days, and just watching the operation, and right after then somewhere thereafter this fellow was working for my brother --

THE COURT: Keep your voice up.

A This fellow was working for my brother and one day he decided to leave, and he told me that I should get the money from Gator and, when he complete the package that he was working with and give him another package and accept the money.

Q Let's back up a bit, and see if we can describe who you are talking to and what was going on at 117 West 116th. Who was there when you were there that day?

A Myself, Gator, Gypsy and Rico.

Q Now, you have referred to someone as Gator. Who was Gator?

A Gator was working for my brother.

APP 75

dwrf 8

Blackburn-direct

Q These persons you have identified as Real Thing and Bubby, who were they?

A They are persons who frequent the premises 117 West 116th Street.

Q What happened after you encountered them?

A We had a conversation where Bubby and Real Thing offered to sell me quarter ounces --

MR. SCHMUKLER: Your Honor, I am going to object.

MR. GARNETT: Your Honor, they have been identified in the bill of particulars and prior to trial as unindicted co-conspirators.

THE COURT: Overruled.

A Where they, Bubby and Real Thing offered to sell me quarter ounce packages of heroin. I told them that I didn't want to buy quarters from them. That I was waiting to see Cody, I wanted to get two ounces of pure. And also, I had \$3,000 for that purpose.

After staying inside and talking with Bubby and Real Thing and waiting for Cody to arrive, and after having waited a while and his not showing up we decided to just go outside and hang around for a while.

After hanging around we decided that we were going to leave. I got into the car, along with Country,

APP 76

dwrf 4

James Bryant-recross

going to inquire any further.

All right, sir, you may step down.

THE WITNESS: Thank you, sir.

(Witness excused.)

THE COURT: This whole thing was only what is on his mind and obviously as I will charge you when the time comes what you have got to determine is the truth of what he said. And anything that could possible be relevant as to his motive for saying it is grist for the mill and something you are entitled to consider.

His motive by hypothesis can only arise by what he thinks. It can't arise out of anything else.

MR. GARNETT: The Government calls Leander Clarke.

LEANDER CLARKE, called as a witness by the Government, being first duly sworn, testified as follows:

MR. GARNETT: May I proceed, your Honor?

THE COURT: Yes.

DIRECT EXAMINATION

BY MR. GARNETT:

Q Mr. Clarke, I will ask you to keep your voice up so that everyone can hear you in the courtroom.

Have you ever been convicted of a crime?

A Yes, sir.

APP 77

1 dwrf 1 pm 1

2 AFTERNOON SESSION

3 2:15 p.m.

4 (In open court, jury present.)

5 MR. GARNETT: The Government calls William Clark.

6 W I L L I A M C L A R K, called as a witness

7 by the Government, being first duly sworn, testified

8 as follows:

9 DIRECT EXAMINATION

10 BY MR. GARNETT:

11 Q Mr. Clark, you have a speech impediment, don't
12 you?

13 A Yes.

14 Q So in view of that would you keep your voice as
15 loud as you can and speak as slowly as you can so
16 everyone can hear you in the courtroom?

17 A Try my best.

18 THE COURT: By the way, is there any objection
19 to the pictures that were offered?

20 MR. WELLS: I have none, your Honor.

21 THE COURT: They are received.

22 (Government Exhibits 9-D through 9-F, 10 through
23 10-D, 3-A through 3-E, and 8 through 8-H, 7 through
24 7-D received in evidence.)

25 Q Mr. Clark, can you read or write?

1 dwrf 15

Clarke-direct

APP 78

2 A Between Lenox and Seventh.

3 Q On the street?

4 A Yes, sir.

5 Q All right. Tell us what you said to him and
6 what he said to you?

7 A I told him, you know, that I am sorry, you
8 know, that the package came up short the first one, and
9 that I would make it up. He say, "All right, don't worry
10 about it, Junior."

11 And I told him, "Well I'll send Donna back down to
12 get it."

13 He say, "Okay," and I sent her. I went home
14 and I sent her back down.

15 Q Did there come a time when she returned with the
16 package?

17 A Yes, sir.

18 Q What did that package contain?

19 A Quarters, heroin.

20 Q How many quarters?

21 A 50.

22 THE COURT: 50, you said.

23 THE WITNESS: Yes, sir.

24 Q Would you tell us what happened with that package?

25 A Then I didn't pay him for that one neither.

APP 179

2042

ards 6

that only the top persons in the distribution network were the ones effected by that statute. At page 4576 of the 1970, "This section is the only provision of the Drug Control Act providing minimum mandatory sentences, and is intended to serve as a strong deterrent to those who otherwise might wish to engage in the illicit traffic, while also providing a means for keeping those found guilty of violations out of circulation."

Clearly, that is Mr. Griffin, heading the bottom of the ladder in the network of distribution in this country providing street level junkies with this heroin and, clearly, if this statute reaches him, I believe, your Honor, it would effect him more greatly than persons like Sperling and all the other cases, your Honor. Here is a classic case of where this statute should be applied.

THE COURT: Mr. Schmukler, I think he has made out a prima facie case. I've got to realize I'm not supposed to decide if I would do if I were the prosecutor or defense counsel. This case I would be on the side of both of you. If I were the prosecutor I wouldn't want this count and if I were the defendant I wouldn't want it severed.

I think it comes within the purview of the legislation where it is a matter of prosecutorial discretion and as to whether he will use it or not, it is none of my

APP 80

1562

1 pgrf 4

2 THE COURT: Perhaps we will take a short recess.

3 (Jury leaves courtroom, short recess.)

4 THE COURT: I will hear from Mr. Garnett

5 first.

6 MR. GARNETT: Your Honor, the theory of the re-
7 mainder of the Government's case is this: That this
8 defendant expended substantial sums of money on specific
9 purchases which the Government would like to produce
10 proof of.

11 Secondly, your Honor, a number of these purchases
12 are expenditures made by the defendant's wife. In an
13 attempt to negate the monies of the wife we would like
14 to produce the fact that she had any assets whatsoever
15 by the fact that she filed no income tax returns of her
16 own except when she married and with her husband.

17 Two: The Social Security Department of HEW will
18 testify that no contributions were made by the wife as
19 to any source of income.

20 Three: The Government would prove that this wife
21 had no income from 1964 through 1975 when she was
22 receiving benefits from the Department of Social Services
23 in New York.

24 That clearly would establish that she had no other
25 income other than the subsistence allowed for herself

1 pgrf 4

2 THE COURT: Perhaps we will take a short recess.

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13 attempt to negate the monies of the wife we would like
14 to produce the fact that she had any assets whatsoever
15 by the fact that she filed no income tax returns of her
16 own except when she married and with her husband.

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18 testify that no contributions were made by the wife as
19 to any source of income.

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21 had no income from 1964 through 1975 when she was
22 receiving benefits from the Department of Social Services
23 in New York.

24 That clearly would establish that she had no other
25 income other than the subsistence allowed for herself

1 pgrf 5

2 and her children prior to her marriage in 1972 and
3 subsequent to 1972.

4 Once that is negated then the Government submits
5 that any additional proof as to expenditures of monies
6 wherever found in the name of Walter Griffin are
7 attributed to this defendant. Several purchases were made
8 in the name of the wife. Several expenditures were made
9 in the name of wife. A bank account was opened in the
10 name of the wife. A savings account was opened in the
11 name of wife.

12 Clearly, your Honor --

13 THE COURT: All these places with the addresses
14 given in each case are Cordell Griffin's home address?
15 How do you establish that this document has anything to do
16 with his wife?

17 MR. GARNETT: That has her name on it and the
18 address 1740 Grand Avenue, apartment 10..

19 I intend to produce witnesses to testify that the
20 building was owned by two different people during the
21 relevant period; that during those periods Codell and
22 Walter Lee Griffin lived in that apartment and continues
23 to live there even through today.

24 THE COURT: That establishes the connection.

25 MR. GARNETT: I would advise the Court now

pgrf 12

Baena-

1570

The exhibit is received subject to connection.

(Government's Exhibit 28 received in

evidence.)

THE COURT: And all the testimony is subject to connection.

BY MR. GARNETT:

Q Mr. Baena, what is the name listed there of the purchaser and the purchaser's address?

A W. Griffin, 1740 Grand Avenue, apartment 106.

Q Can you tell us how that transaction occurred from the document?

THE COURT: Is there anything on the face of it to show whether it is Miss or Mr. or Mrs.?

THE WITNESS: I would say 80 or 90 per cent of our sales are usually women that come in.

MR. SCHMUKLER: I object to that.

Q I direct your attention to this portion of the document and ask you whether it indicates the status of the person purchasing that sofa?

A I would say a woman purchased it.

APP 84

1 ards 8 Carlin - direct 1578
2 Q will you tell us how long you have been in that
3 business?
4 A Fifteen or eighteen years.
5 Q Did there come a time when you purchased a
6 building at 1740 Grand Avenue in the Bronx?
7 A Yes, I did.
8 Q When did you purchase that building?
9 A January 1976.
10 Q You were asked to produce some documents here
11 in court today?
12 A Yes, I was.
13 Q Do you have them?
14 A Yes.
15 Q Will you tell us briefly what the documents are?
16 A They are records I keep on rent collections.
17 Q Would you tell us who occupies apartment 106
18 at 1740 Grand Avenue?
19 A I have listed W. and C. Griffin.
20 Q Did they move into the building subsequent to
21 your purchase or before?
22 A Before.
23 THE COURT: They were there when you got there?
24 THE WITNESS: Right.
25 Q Could you tell us how much rent per month

App 85

ards 9

Carlin - direct/cross

1579

apartment 106 is rented for?

A \$285 a month.

Q Had that been consistently the rent from the time you owned it, you purchased it until today?

A Yes.

MR. GARNETT: May I have a moment, your Honor?

(Pause)

MR. GARNETT: I have no further questions at this time.

CROSS-EXAMINATION

BY MR. SCHMUKLER:

Q What is your first name?

A Martin.

Q You own a real estate company?

A I am in the real estate business.

Q What do you do?

A I manage apartment houses.

Q You own the building you just talked about?

A Yes.

Q So you are the owner-manager of that particular building?

A Yes.

Q Do you own other buildings?

A Yes, I do.

APP 86

1617

ards 4 Babbitz - direct

Q How long have you been so employed?

A Since 1959.

Q Let me show you Government Exhibit 34 for Identification. Can you identify the two items which make up that exhibit?

A Yes. These are delivery invoices that we normally keep in our records.

Q What were the items delivered?

A One is a Zenith color television which was delivered in 1974 and the other is a Fedders air conditioner, also delivered in 1974.

Q To whom were they delivered?

A To W. Griffin.

Q Both?

A Both at 1740 Grand Avenue.

Q In the Bronx?

A That is right.

Q Are those records made and kept in the normal course of business of Savmart?

A Yes.

Q Is it the normal course of business of Savmart to make and keep these records?

A Yes, we keep them back about five years.

MR. LAVIN: I offer 34 in evidence at this time.

pgrf23

Samuels-direct

APP 87

BY MR. GARNETT:

Q Mr. Samuels, Government's Exhibit 40 includes an envelope and some documents included in the envelope?

A Yes.

Q Is that the normal practice, to put these documents, the papers, in the envelope?

A Yes, sir.

Q With respect to the documents that are in the envelope, do they indicate a purchase of an automobile?

A Yes, sir.

Q Would you tell us who the purchaser was, the purchaser's address, the date of purchase, and the type car purchased?

MR. SCHMUKLER: I object. All he can do is sit there and read it. He had nothing to do with the transaction.

THE COURT: He can read it better than we can.

MR. SCHMUKLER: So can Mr. Garnett read it better than he can.

THE COURT: I doubt it.

A The car was sold to Walter Lee Griffin, 1740 Grand Avenue, Bronx, New York. Purchase of an automobile: It was at 450 SCL Mercedes Benz. The date the car was sold was May 28, 1975. The purchase price, \$19,635.

pgrf 2

Gardella-direct

It has not been offered.

APP 88

Q How long have you been employed at --

A A little over seven years.

Q Let me show you Government's Exhibit 55 for identification. Can you identify those records?

A Yes, I can.

Q Can you tell us what they are?

A It is the complete sale of an automobile, all the papers involved.

Q What kind of automobile?

A An audi, a 1974 Audi.

Q Was this a record made and kept in the normal course of business?

A Yes.

Q It is the normal course of business of your corporation to make and keep that record?

A Yes, it is.

MR. LAVIN: We would offer this, Government's Exhibit 55, into evidence at this time.

THE COURT: Does this only affect Mr. Griffin?

MR. LAVIN: Yes.

THE COURT: Any objection?

MR. SCHMUKLER: Same as previously noted.

THE COURT: Overruled.

APP 89

pg 6

Citrin-direct

Q Are those records made by your corporation in the normal course of its business?

A Yes.

Q Is it the normal course of business of your corporation to make and keep those records?

A Yes.

Q They relate to the purchase of a car?

A Yes.

MR. LAVIN: Your Honor, at this time we offer Government's Exhibit 56 into evidence.

(Pause.)

MR. SCHMUKLER: Same objection as previously made

THE COURT: It will be received.

(Government's Exhibit 56 received in evidence.)

Q Look at these records while I ask you some questions.

To whom was that car sold?

A Walter L. Griffin.

Q What is the address given?

A 1740 Grand Avenue in the Bronx.

Q What was the car that was sold?

A He purchased a 1974 Continental Mark IV.

Q What was the total sales price of that Lincoln?

1

ards 1

Davoll - direct

Griffin

2

Q Who is the person who opened that account?

3

A The title on this account is Mrs. Walter Lee

4
pm

4

Griffin.

5

Q And the second document?

6

A It is the application for ther personal account.

7

Q Would you tell us what the address of that

8

person is?

9

A 1740 Grand Avenue, Bronx, New York.

10

Q And the remaining items attached to Government

11

Exhibit 57 are what?

12

A All the other items are the copies of the

13

monthly bank statements.

14

Q They run from when to when?

15

A 6/17/74 through 12/17/76.

16

Q With regard to Government Exhibit 58 in Evidence,

17

would you identify that for us?

18

A Signature card for the savings account.

19

Q What is the name of that account?

20

A Mrs. Walter Lee Griffin.

21

Q You are reading from the green card attached to

22

the exhibit, are you not?

23

A Yes.

24

Q With respect to the pink card attached to it,

25

is there another name of the person who opened that account?

ards 6

Babbitz - cross

CROSS-EXAMINATION

APP 91

BY MR. SCHMUKLER:

Q Do you know where these were delivered, sir?

A Excuse me?

Q Do you know where these appliances were delivered?

A Yes.

Q Both to 1740 Grand Avenue?

A That is right.

Q They don't have cable TV there?

A We don't, to my knowledge.

Q In the Bronx?

A No.

MR. SCHMUKLER: Nothing further.

THE COURT: You may step down.

(Witness excused)

MR. LAVIN: The government calls Charles Floyd.

C H A R L E S M. F L O Y D, called as a witness
on behalf of the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. GARNETT:

Q How are you employed?

A Special investigator, Department of Social

ards 7

Floyd - direct

1620

Services.

APP 92

Q How long have you been so employed?

A Seven and a half years.

Q Was your office subpoenaed to produce certain documents to this court?

A Yes, they were.

Q Were they produced?

A They were.

Q I show you what has been marked as Government Exhibit 33 for Identification and ask you if you can identify that?

A This is a case record for the Department of Social Services.

MR. SCHMUKLER: May I have a side bar?

THE COURT: Certainly.

(At the side bar)

MR. SCHMUKLER: Judge, I can't emphasize strongly enough the terrible unfair prejudice that will accrue to my client by the introduction of evidence that his wife sought welfare. All that does is it doesn't demonstrate additional income, or that he was penurious and had no other source of income.

THE COURT: He undoubtedly will have an affidavit to the effect she didn't have any other income.

APP 93

ards 8

Floyd - direct

1621

MR. SCHMUKLER: All that would prove is that she lied to them.

THE COURT: That is for you to argue to the jury. If you want to concede she had no other income that is a way of getting around it.

MR. SCHMUKLER: Judge, when she said that she has no other income, that is an untruthful statement on her part, she lied to get welfare and she got additional money by doing that. So in effect she committed a welfare fraud, relying on Mr. Garnett's assertions.

That being the case what probative value does it have if she did this? All it does is lay a crime at her feet and involve my client in an impropriety in which he had no part.

THE COURT: How are you going to prove the other income?

MR. SCHMUKLER: That doesn't prove other income. The evidence is that she made purchases obviously of luxury items, television set, sofa and paid the rent there. Clearly these are going to relate to purchases far in excess of any possible welfare monies so it cannot be a question of the absence of any other source. He is not proving the absence of any source.

THE COURT: What do you propose to prove as to

APP 94
1622

ards 9 Floyd - direct
other sources?

MR. SCHMUKLER: I haven't decided, Judge. I just know that whatever I decide -- I will tell you this much, I am certainly not going to elicit that she was receiving welfare monies.

There is no way that I can explain away these heinous acts.

THE COURT: I don't see that that is so heinous.

MR. SCHMUKLER: It is a terrible thing, to produce evidence that my client made monies from narcotics and narcotics activities and his wife signed up for welfare. That is going to excite the passions of the jury and they will start weighing the possibility of these people cheating Welfare and attribute it to the wife and as an act of the defendant, just as Mr. Garnett attempted to show the purchases and whatever she does.

I can't defend a welfare fraud charge and that is what I am forced to do and I can't do it. There is nothing I can say about that, no argument I can give the jury, none.

MR. GARNETT: She is not on trial, we are not offering it for that purpose. We have an obligation to --

THE COURT: Why don't you just concede as far as you know the wife had no other independent source of

1 ards

2 is the normal assumption and the jury will assume it anyway.

3 MR. SCHMUKLER: They are just as likely to say
4 that he was aware she was getting welfare at the same time
5 he was supporting her.

6 THE COURT: If there is nothing about welfare
7 in the case they wouldn't be aware of it.

8 MR. SCHMUKLER: I'm not the one putting it in,
9 Judge.

10 THE COURT: The government is putting it in. If
11 you don't want it put in I won't let them put it in if you
12 give them that stipulation. That is up to you. I can't
13 do any more than that.

14 MR. SCHMUKLER: The stipulation you propose I
15 give is to the effect, to the knowledge of my client --

16 THE COURT: That he was supporting his wife.
17 That is all that most men even in these days have to do.

18 MR. GARNETT: There is another aspect of the
19 case, your Honor. Remember yesterday we spoke about the
20 address of W. Griffin at another location other than 1740?

21 Here again, as the documents are introduced,
22 you will see varying addresses and change of address from
23 one place to another. The address that this woman used,
24 at least from the time she was married to the time she was
25 terminated on welfare, was an address other than 1740 Grand

APP 96

ards 1

(Pause)

Griffin

tk3
am

THE COURT: After discussion with Mr. Schmukler representing Codell Griffin and Mr. Garnett representing the government they have reached the following stipulation:

The defendant's wife, now known as Walter Lee Griffin, had the maiden name Walter Lee Afflic.

2. On Certain documents she gave her address between 1971 and 1975 as 2116 Eighth Avenue, Manhattan.

3. Since her marriage she has been entirely dependent on the defendant for support, having no assets or income of her own.

If the defendant in summation raises any argument inconsistent with the spirit of this stipulation, I will stop him.

MR. SCHMUKLER: I hope by the same token the government, if it attempts to draw inferences of income and resources that she possessed prior to then and attempts to attribut them to my client you will stop him as well.

THE COURT: Yes, nobody is going to attempt to say that she had income or resources before the marriage.

MR. GARNETT: Your Honor, I should say I may prove that she had assets which the defendant provided before the marriage and I will advise Mr. Schmukler and the Court.

ards

Hirsch - cross

A Mailed in an envelope slipped under the door.

MR. SCHMUKLER: I have no further questions.

(Witness excused)

MR. LAVIN: Elisa Pappas.

E L I S A P A P P A S, called as a witness
on behalf of the government, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. LAVIN:

Q Mrs. Pappas, how are you employed?

A I am employed at the Union Dime Savings Bank.

Q Where is that located?

A 40th Street and Sixth Avenue.

Q What are your duties at that bank?

A I am supervisor of tellers.

Q Let me show you Government Exhibit 31 for Identification. Can you identify that?

A This is a transcript of a record of an account at the Union Dime Savings Bank.

Q For whose account?

A Mr. Griffin.

Q Was that record made and kept in the normal course of business?

A Yes.

1 ards Vitiello - direct

2 Q Let me show you Government Exhibit 41. Can you
3 identify each of those items which make up that exhibit?

4 A 41 is a checking account statement.

5 Q For whom?

6 A Jacqueline Martin.

7 Q For what period of time?

8 A April 1972 through October 1975.

9 Q What about the other parts of that exhibit, the
10 checks and the deposit slips? Are these records made and
11 kept in the normal course of business?

12 A Yes.

13 Q Is it the normal course of business of the bank
14 to make and keep those records?

15 A Yes, it is.

16 Q Those checks and deposit slips are the items
17 that are reflected on the statements?

18 A Yes, they are.

19 MR. LAVIN: At this time we would offer 41, which
20 consists of statements and canceled checks and deposit slips,
21 in evidence.

22 MR. SCHMUKLER: No objection other than as
23 previously noted.

24 THE COURT: Received

xxx

25 (Government Exhibit 41 for Identification

APP 99

pg 5

Martin-direct

Q In whose names was that account opened?

A Jacqueline Martin, Codell Griffin.

Q Did there come a time when the account was changed to a trust account for the benefit of your daughter?

A Yes.

Q With respect to the funds that were deposited into the savings account, would you tell us where those monies came from, from whom?

A Cody.

Q Did you also deposit any funds in that account?

A Yes, sir.

Q Of your own?

A No.

Q With respect to your account at Irving Trust Company, and I specifically direct your attention to the period subsequent to April of 1972, were monies deposited into that checking account at Irving Trust?

A Yes.

Q Did you deposit your own personal funds into that account?

A About 2 per cent of my own. The rest was Cody's.

Q The remainder of the deposits was the result of monies received from Codell Griffin?

ards 2 Edwards - direct

perform your services, were you not?

APP 100

A We were advised as to the entity Jackie's Boutique, as to what type of entity it was. It was a partnership and that partnership consisted of two parties.

Q Who were the parnters?

A Mrs. Jacqueline Martin and Mr. Codell Griffin.

Q Were there any further instructions in that letter?

A Two instructions as I recall without just looking at the letter.

One was how to allocate profits and losses between the two partners.

Q How were you instructed to allocate those profits and losses?

A On a 90-10 basis, 90 to Mr. Griffin and 10 to Mrs. Martin and profits on a 50-50 basis.

Q Were you also advised as to the investment contributions, capital investment made to Jackie's Boutique?

A Yes.

Q What were you told?

A Told that all of the capital contributions came from Mr. Griffin.

Q Based on that letter, did you perform certain accounting functions?

APP 101

pgrf 4

Martin-direct

Q Did you use monies to open that boutique?

A There was money used to open the boutique,
yes.

Q Where did that money come from?

A From Codell.

Q I show you Government's Exhibit 72 in evidence
and ask you if you have ever seen that document before.

A Yes, I have.

Q Is that a letter from attorney James Feaster to
Haskins & Sells?

A Yes, it is.

Q Did you have a conversation with Codell Griffin
concerning that letter from Feaster?

A Yes, we did.

Q Did there come a time when you opened a
checking account at the Irving Trust Company?

A Yes.

Q Did you maintain that account during the period
of your relationship with Mr. Griffin?

A Yes.

Q I direct your attention to April of 1971 and
ask you did there come a time when you opened a savings
account at Union Dime Savings Bank?

A Yes, I did.

ards

Hewitt - direct

MR. SCHMUKLER: I object on relevancy, your

Honor.

THE COURT: No other objection?

MR. SCHMUKLER: Except as I previously said.

THE COURT: Overruled.

MR. SCHMUKLER: Has your Honor overruled my

objection?

THE COURT: Let me see the documents.

(Handed to Court)

THE COURT: Overruled.

(Government Exhibits 51, 52 and 53 for Identification received in Evidence)

Q Mr. Hewitt, I again show you 51, 52 and 53 in Evidence and ask you if you will direct your attention to 51 and tell us what that document is?

A This is a certified copy of Articles of Incorporation of Walkie Enterprises, Inc.

Q Is there listed on there the incorporators or officers?

A That is correct.

Q Will you tell us where they are?

A At the time of incorporation, which was May 23, 1974, the initial Board of Directors is four, listed as Codell Griffin, Jr., Carrie A. Joe, Bernard Taylor and Isaac

1 pgrf 13

Crocker-direct

2 MR. SCHMUKLER: You have admitted the document.
3 The witness is going to describe the conversation. That
4 is no longer the document.

5 THE COURT: The document is a record of the
6 conversation, isn't it?

7 THE WITNESS: Yes.

8 MR. SCHMUKLER: He is telling us what the
9 conversation was.

10 THE COURT: The document is a record of the
11 conversation. He is telling us what the conversation is
12 that the document records. Overruled.

13 Q Tell us what happened?

14 THE COURT: Am I correct?

15 THE WITNESS: Yes.

16 Q Tell us what happened.

17 A Odis Hatten gave me the breakdown of the stock
18 allocation in this corporation.

19 Q Tell us what that breakdown was?

20 A Bernard Taylor was to get 11.3 per cent; Odis
21 Hatten was to get 11.3 per cent; Codell Griffin, Mr. Was
22 to get 1.4 per cent; Moses Dillard, Jr. was to get 25
23 per cent; Lizzie S. Hall was to get 25 per cent; and
24 Walter Lee Griffin was to get 25 per cent.

25 Q In connection with those percentages, I refer

1 ards 7 shadow - direct

2 read back?

3 THE COURT: I heard it. Overruled.

4 A I met with James Feaster and Halison Young.

5 James Feaster represented the group who were at the
6 meeting that he --

7 MR. SCHMUKLER: Objection.

8 THE COURT: Overruled.

9 A (Continuing) that he was representing an indi-
10 vidual by the name of Sealy and -- may I see the document
11 to refresh my recollection?

12 (Handed to witness)

13 A Codell Griffin. And an individual by the name
14 of Lindsay Huddleston.

15 Q Were shares of this venture sold to these
16 various partners?

17 A They were sold to Mr. Sealy and to Mr. Griffin.
18 Shares were not sold to Mr. Huddleston.

19 Q Were there any other partners for this venture?

20 A Another partner, Jerome Winkler, who was not
21 represented by Mr. Feaster and Carroll Scales one of the
22 general partners and myself.

23 Q Now, I make reference to the documents individually.

24 The first group of documents, part of Exhibit 67 in
25 evidence is the partnership agreement, is that correct?

ards

Schlegel - direct

1941

BY MR. GARNETT:

Q Mis Schlegel, with respect to Government Exhibit 76 in Evidence, would you tell us what that document is?

A The individual income tax, Form 1040 for the year 1970.

Q When was this tax return filed, if you can determine that, and I believe you are referring to Government Exhibit 81?

A The date it was filed and the legal assessment was 2/18/74.

THE COURT: February 18?

MR. GARNETT: 1974.

Q But it is the return for 1970?

A Yes, it is.

Q Now, whose return is that?

A It is the return for Codell Griffin of 107 West 107 Street, New York, New York.

Q What status did he file under?

A Self-employed.

Q What is the designation of his filing status?

A Single.

Q Now, I direct your attention to Schedule C which is entitled Profit or Loss From Business or Profession.

ards

Schlegel - direct

1942

Is income declared on that page?

A Yes, there is.

Q What is the gross income declared?

A \$14,460 even.

Q Fourteen thousand?

A Yes, sir.

Q That is gross income on the self-employed

Schedule C?

A Yes, it is.

Q Are there any deductions taken on Schedule C
from that gross income?

A No, sir, there are not.

Q So that the next profit is the same as the
gross income?

A Yes, it is.

Q Is that net profit transferred to page 1 of the
1040 as adjusted gross income?

A Yes, it is.

Q In other words, there were no deductions from
gross receipts to the adjusted gross income?

A Correct.

Q I direct your attention to page 2 of that
return and particularly Part 4 which is the tax computation
and to save time, chose the standard deduction and one

APP 107

ards Schlegel - direct

1943

exemption?

A Yes, sir.

Q Directing your attention to Government Exhibit 77 in Evidence, would you tell us what that is?

A Individual income tax return Form 1040 for the year 1971.

Q Whose return is that, Codell Griffin?

A Yes.

Q And the address?

A 107 West 107 Street, New York, New York.

Q What is the source or occupation from which that income tax return was prepared?

A Self-employed.

Q What is the filing status?

A Single.

Q I direct your attention again to Schedule C, Profit or Loss From Business or Profession and does that reflect the income declared?

A Yes, it does.

Q How much income was declared on the 1971 return?

A \$16,809.

Q Again referring to Government Exhibit 81, can you tell us when that 1971 return was filed?

A 12/17/73.

1 ards Schlegel - direct 1944

2 Q Again as with 1970, the gross income on the
3 self-employed Schedule C is also the net profit reflected,
4 is it not?

5 A Yes, it is.

6 Q That net profit is again transferred to page 1
7 of the 1040, the adjusted gross income line?

8 A Yes, sir.

9 Q I refer you to page 2 of the 1040 and that
10 is the income from which the standard deduction and one
11 exemption was taken?

12 A Yes, sir.

13 Q Government Exhibit 78 in Evidence. Again, would
14 you tell us what that is?

15 A Individual income tax return Form 1040 for the
16 year 1972.

17 Q Whose tax return?

18 A Codell Griffin, 107 West 107 Street, New York,
19 New York.

20 Q His occupational status?

21 A Self-employed.

22 Q His filing status?

23 A Single.

24 Q When was this 1972 returned filed?

25 A December 10, 1973.

ards

Schlegel - direct

1945

Q Again, you were referring to Government Exhibit 81?

A Yes, sir.

Q With respect to the 1972 return, I refer you to Schedule C, Profit or Loss From Business or Profession, and ask you if there is a declaration of income?

A Yes, there is.

Q What is that?

A \$21,343.

Q As with 1970 and 1971, are there any subtractions on that Schedule C?

A No, there are not.

Q Therefore the net income is the same?

A Yes.

Q Is it reflected on page 1 of the 1040?

A Yes.

Q With respect to page 2, to save time, there is a standard deduction and one exemption?

A Yes, sir.

Q Directing your attention to Government Exhibit 79, I ask you what that document is?

A Individual income tax Form 1040 for the year 1973.

Q Would you tell us whose tax return that is?

ards

Schlegel - direct

1946

A Codell and Walter Lee Griffin of 39-41 West 129 Street, apartment 2D, New York, New York.

Q Would you tell us the respective occupations of both parties?

A The husband is self-employed; spouse has no occupation.

Q What is the filing status?

A Married, filing joint return.

Q With respect to Government Exhibit 81, when was the 1973 tax return filed?

A November 17, 1975.

Q Would you tell us, referring to Schedule C, Profit or Loss From Business or Profession, would you tell us if there is a declaration of income?

A Yes, there is.

Q What is it?

A \$69,335.

Q As with the other returns, is there any deduction from the gross to arrive at the net profit?

A No, there is not.

Q I direct your attention to page 2 of the 1040 and particularly the income part, income other than wages, dividends and interest.

Is the \$69,000 transferred to that part?

ards Schlegel - direct

1947

A Yes.

Q Also in that part is there reflected a loss of \$43,279?

A Yes, there is.

Q The net amount is transferred to page 1 of the 1040 as adjusted gross income?

A Yes.

Q What is the amount?

A \$26,038.

Q With respect to page 2 again, the adjusted gross income has a standard deduction of \$2000 and there is reflected five exemptions?

A Yes.

Q Finally, Government Exhibit 80 in Evidence, would you tell us what that document is?

A The individual income tax return form 1040 for the year 1974.

Q Whose tax return is that?

A Codell and Walter Lee Griffin of 39-41 West 129 Street, New York, New York.

Q Would you tell us, referring to Government Exhibit 81, when the 1974 tax return was filed?

A November 21, 1975.

Q Back to Government Exhibit 80, there is no

APP 112

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Schlegel - direct

1948

Schedule C on the 1040 on that return?

A Correct.

Q I refer you to page 2 of the 1040, Part 1, income other than wages, dividends and interest and ask you is there an entry made on line 37 which is other income, state nature and source, see instruction on that line 37, a figure of income declared?

A Yes, there is.

Q What is that?

A \$73,400.

Q I direct you to Schedule E&R, Part 3, and ask you is there listed income or loss from partnership, estates or trusts?

A Yes.

Q Will you tell us what that loss is?

A \$57,671 loss.

Q Is the nature of those losses from certain businesses?

A Yes, it is.

Q What is reflected there?

A Richton Limited Housing and Jackie's Boutique.

Q Is it fair to say that the deductions from the net amount, from 73,000 minus 57,000 is reflect on page 1 of the 1040 as adjusted gross income?

APP 113

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Schlegel - direct

1949

A Yes.

Q What is that amount?

A \$15,729.

Q With respect to Government Exhibit 79, which is the 1973 return, are the losses which you already testified to, \$43,297, is the nature of that loss reflected?

A Yes, sir.

Q Again, on the Schedule E&R, Part 3.

A Yes, sir.

Q Would you tell us what the nature of the loss is?

A Richton Limited Housing and Jackie's Boutique.

Q I refer you again to Government Exhibit 81. Will you tell us what that series of documents is?

A Certificate of the assessment and payments for the Form 1040 for the year 1970, Codell Griffin.

Q It includes each of the years, does it not?

A Yes, sir, 1970 through 1975.

Q Finally, what do these documents tell you, as an ordinary layman?

A It shows the amount of taxes due per the return. There is the document locator number attached to the return; any subsequent debits and credits by either the government or the taxpayer on this specific tax year and the balance

APP 114

1 ards Schlegel - direct 1950

2 due on the taxpayer's account.

3 Q With respect to the 1970 return, were there
4 any credits made?

5 A Yes, sir.

6 Q Were these credits made by the taxpayer?

7 A No, they were made by the IRS, transfers of money.

8 Q With respect to the 1971 return, were there any
9 credits made by the taxpayer?

10 A No, sir, there were not.

11 Q With respect to the 1972 return, were there any
12 credits made by the taxpayer?

13 A No, sir.

14 Q With respect to the 1973 return, were there any
15 credits made by the taxpayer?

16 A Yes, sir.

17 Q Would you tell us what those credits are, total?

18 A \$5,575.

19 Q These would reflect amounts paid by the taxpayer,
20 is that correct?

21 A Yes, sir.

22 Q With respect to the 1974 return, are there any
23 credits shown?

24 A Yes, sir.

25 Q Would you tell us the amounts paid by the taxpayer?

APP 115

ards

Schelgel - direct

1951

A \$3000.

Q With respect to the 1975 return, are there any credits shown?

A Yes, sir.

Q Will you tell us what the credits shown are?

A \$5000.

Q These reflect monies --

THE COURT: What do you mean by credits?

THE WITNESS: Payment on the tax account.

THE COURT: By the taxpayer?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q Some of the documents reflect other credits given but these are not amounts paid by the taxpayer but rather internal proceedings taken by the IRS?

A Yes.

Q But the amounts you refer to, the amount paid by the taxpayer, were actually amounts paid by the taxpayer?

A Yes, sir.

MR. GARNETT: I have no further questions of this witness.

THE COURT: Any cross?

MR. SCHMUKLER: I wouldn't call it cross, but I have some questions.

APP 116

pgrf 8

the testimony you have heard concerning Monk, Kenvv, Gator, Real Thing, Bubby, Dicky Diamond, Tim, Bill, Gypsy, Rico, and Roy. Those are the persons you have heard about specifically who have been identified as human beings. You have heard other names mentioned on the tapes. You heard testimony from Country as to a Skeeter and Melvin.

His Honor will instruct you as to what you are to determine in evaluating this testimony concerning the five or more persons and we submit that that requirement has been met by the testimony you have heard.

The second one is the money, substantial income and resources.

All this money that you heard testimony about, the payments for cash of just about everything here, shows that Codell Griffin was a success at what he did. His success should not be at the misery of other persons through the sales of narcotics.

MR. SCHMUKLER: Objection.

MR. GARNETT: Everyone cannot and will not be a success in this country but our system is that if one is to be successful he is to do it according to law.

With respect to the exhibits which have been introduced, and they are yours to take into the jury room, if you so desire, they have all been admitted into

1 parf 9

2 evidence, in 1971, subsequent to May of 1971, Codell
3 Griffin had \$800 which was deposited into Jackie Martin's
4 savings account. It was Jackie Martin's and his and sub-
5 sequently it was changed for the benefit of Cody Denise,
6 their daughter.

7 Mr. Schmukler brought out on cross examination
8 that some of the checks which were deposited into that
9 savings account were checks from sources other than Codell
10 Griffin.

11 Of the remaining deposits not identified by
12 checks I ask you to believe Jackie Martin's testimony. She
13 said that all of the money that went in there was Cody's
14 until Mr. Schmukler brought out that some checks deposited
15 were attributed to other persons, but exclude those and
16 there is still \$800 that went in that year.

17 In 1972 -- that is Government's Exhibits 31 and
18 31-B -- there are several sources of money that the
19 Government was able to find, and again I caution you,
20 the Government was not able to find every dime that Mr.
21 Griffin --

22 MR. SCHMUKLER: That is objected to, your Honor.
23 It is speculation and I object.

24 THE COURT: That is speculation.

25 MR. GARNETT: I suggest to you that all monies

1 parf 10

2 were not found --

3 MR. SCHMUKLER: Objection.

4 THE COURT: That is speculation obviously.

5 MR. GARNETT: But the monies which were attributed
6 to Codell Griffin, with what the Government could find,
7 are here before you now as exhibits and particularly with
8 respect to 1972 you heard that Mr. Griffin paid rent at
9 1740 Grand Avenue.

10 While we are talking about 1972, Government's
11 Exhibit 32 is a marriage certificate of Codell Griffin
12 to Walter Lee Afflic, and the addresses that they both
13 gave, Mr. Griffin was at West 129th Street and Miss Afflic
14 was at 2116 Eighth Avenue.

15 There are a number of addresses that appear. In
16 South Carolina he used the Grand Avenue address and
17 in the purchase of cars he used a different address, and
18 in tax returns a different address.

19 His rent was \$825. Further deposits excluding
20 those not attributed to checks of other sources, \$875.
21 He purchased a 1972 Cadillac in Jackie Martin's name
22 and that was \$10,000. If you recall there was a trade-in
23 of \$3,900 that was attributed to a car from some George
24 Keith, and Miss Martin testified that that was Cody's sister's
25 boyfriend. I suggest that that car valued at that money

1 pgrf 11

2 was either paid for by Mr. Griffin or given to him by
3 Keith.

4 MR. SCHMUKLER: I object. There is no testimony
5 as to the ownership of that car and the document was
6 excluded.

7 MR. GARNETT: It was not excluded. It is introduced
8 into evidence and it is Government's Exhibit 66 in
9 evidence and it related to 65 in evidence, because a man
10 from Cadillac Motor Car came and brought the documents
11 that would show that Jackie paid cash, or at least the
12 cash was taken in Jackie's name. Jackie testified that
13 it was Codell Griffin's money and the car used as a
14 trade-in was George Keith's car, and this document indicates
15 that this was a car purchased by Keith, the car traded in
16 and 66 was introduced in evidence. 65 is the car
17 that was purchased with Codell Griffin's money in her
18 name.

19 Also we get into Irving Trust. If you will recall,
20 Jackie testified that she knew him from the late '60s
21 until he moved out in October, 1972, which was the day he
22 got married to Walter Lee Afflic -- Walter Lee, Walkie,
23 as she testified as to the nickname.

24 But before then, in 1972, throughout that year,
25 \$4,300 was deposited into her account. She testified

1 pgrf 12

2 that of all the monies that went into that account from
3 April of 1972 to the day it was closed, only two per cent
4 of that money was hers. So the total for that year came
5 to a little over \$16,000.

6 1973. Again he paid rent during 1973 and that was
7 approximately \$3,300. Again put together the testimony of
8 each of the rental agents who owned that building during
9 the specific periods and what the rent was. It was paid
10 and in fact they were good customers according to the
11 testimony.

12 Union Dime in that year, excluding all checks,
13 was \$500. He purchased a 1973 Cadillac. This car was
14 purchased in the name of Walter Lee Griffin and it was
15 purchased cash \$5,300. Again deposits with Irving Trust
16 for that year were \$34,000. Of that amount in 1973 there
17 were checks which were taken out of the Irving account
18 and purchases were made for Jackie's Boutique. If you
19 recall Jackie's Boutique started in 1973 with monies given
20 by Codell to Jackie Martin. The exhibits, that is Exhibit
21 41, will substantiate that.

22 Also in 1973 Freedom National Bank, an account
23 was opened in the name of Walter Lee Griffin, and the
24 address was some address other than 1740 Grand Avenue.
25 That is Government's Exhibit 58.

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parf 13

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2 Into that account that year -- and you heard
3 the stipulation that Walter Lee Griffin had no assets which
4 she contributed to their assets and depended solely
5 upon the support of her husband from October '72 throughout--
6 \$3,100 went into that account in 1973. The investment
7 in Jackie's Boutique as testified to, as you will recall
8 by Haskins & Sells, Mr. Edwards, one of the accountants,
9 he testified and the tax returns reflected, the tax
10 returns of Jackie's and tax return's of Codell Griffin, and
11 the letter that was introduced from Feaster, the attorney for
12 Griffin to Haskins & Sells substantiate, that a \$52,000
13 investment was made in Jackie's Boutique.

14 Of course Mr. Feaster testified and we introduced
15 an exhibit that was '73 which showed that he began
16 performing services for Codell Griffin in 1973 and that
17 he received a retainer in '73 of \$1,500. That is a total
18 of \$93,000 for 1973.

19 1974. Rental payments again \$3,300. Union
20 Dime this time only \$900. These are rough figures.
21 There are dollar and cents amounts. You can add those for
22 yourself. I am giving you general figures.

23 There was a purchase from Savmart and I believe that
24 is Mr. Babbit who testified that \$1,200 was spent in his
25 store. A 1974 Mark IV was purchased in the name of Walter

1 pgrf 14

2 Lee Griffin for \$6,400 and cash. A 1974 Audi was purchased
3 in the name of Codell Griffin for \$7,100. Irving Trust
4 had another \$29,000 deposited of which \$11,000 went out into
5 Jackie's Boutique by way of purchases and payments of
6 bills for a net of \$17,000.

7 Freedom National Bank had \$4,900 deposited.
8 C & S Bank, Citizens and Southern Bank, in Greenville, South
9 Carolina in the Walkie enterprises -- and you heard Mr.
10 Hewitt I believe from the Secretary of State's office in
11 South Carolina testify that Piedmont Records and
12 Walkie Enterprises were corporations in the state.
13 Miss Junker testified that bank accounts were in the name
14 of Walkie and she testified as to the deposits which
15 were one of the Government's exhibits, I believe it is 60,
16 \$2,900 that year went into that account.

17 Richton Limited, you will recall, the Detroit
18 connection, they testified in 1973 Codell Griffin signed
19 a promissory note which is in evidence, it is dated
20 December 31st; on his 1973 tax return he took a loss from
21 the company although he had not invested cash money until
22 February of '74, and that is why it is on this list of
23 monies in 1974 because he paid \$22,500 in cash and you
24 heard the banker who testified of application made by
25 Feaster, the payment by Feaster of \$22,500 in cash, the

1 parf 15

2 delivery to him of a cashier's check; the check went to
3 the bank account of Richton Limited and it was reflected
4 on the tax returns of Richton Limited as an investment.

5 Also in Jackie's Boutique that year an additional
6 \$11,000 was invested.

7 Legal fees in that year paid to Mr. Feaster,
8 \$1,400. And a federal tax payment, a payment made in
9 1974 by Codell Griffin against any liability he had
10 on the particular return -- the return is in evidence and
11 so are the transcripts of when the payment was made --
12 but one was made in 1974 of \$5,000.

13 The total amount that year \$115,000. These are
14 general figures. The exhibits are in evidence. You can
15 ask for pencils and paper and you can make your own
16 calculations.

17 1975 -- and I am slowly drawing to a close,
18 1975, Miss W. Griffin, according to sales invoices, purchased
19 some items for \$1,100 from Baena Decorators. Rent was paid
20 but the building had changed hands. Mr. Carlin testified
21 that they paid a certain amount of money per month and
22 if you add that up it is \$3,300 for the year when the
23 increase occurred.

24 Union Dime, there was an additional \$300
25 deposited. In 1975 Walter Lee Griffin purchased a 1975

pgrf 16

2200

Mercedes Benz for \$20,600 cash. All of these car purchases were in cash. There was some testimony about a \$6,000 credit given. The testimony on the Mercedes Benz represent was that they paid \$20,000 in cash because title to the trade-in car was unclear, but once it became clear they refunded \$6,000 so it netted maybe \$14,000, but I submit to you \$20,000 was available and was paid for that car.

A 1976 Cadillac Seville was purchased. You heard Mr. Simmons, \$11,400.

The Irving Trust account had an additional \$11,000 deposited.

Sheraton, about \$575, from those times in 1975 when Mr. Griffin stayed at the Sheraton.

Freedom National Bank \$3,200 deposited.

Citizens and Southern in South Carolina to the account of Walkie, \$16,300 some dollars were deposited.

The deposits to the Piedmont Records, investment in Piedmont Records as per the balance sheet of I believe Mr. Crocker. He submitted his records and they are in evidence, and that showed \$10,000 deposited and you will recall the testimony is from his documents: All of the investments were attributed to Codell Griffin although other persons shared in the ownership, and it is of particular

pg 17

2201

note the pattern indicated here is that Codell Griffin rarely owned anything in his own name and you will find that from the documents that have been introduced, the purchases and so forth.

Mr. Crocker testified that according to his records in April, April 30th, I believe this is 1974, or maybe 1975, the records will reflect the particular year, but it is April 30th, he had a phone conversation with Odis Hatten who advised him of the distribution of ownership and in April Codell had 50 per cent of Walkie, Moses Dillard 25 per cent, Bernard Taylor and Odis Hatten 12-1/2 per cent.

In July according to a phone conversation with Hatten these ownership interests were changed. And you heard Jackie say that is Cody's mother got 25 per cent. Walter Lee Griffin got 25 per cent and Codell's interest went down to 1.4 per cent.

In fact, the charter shows that Codell Griffin is listed as one of the incorporators and an amendment was made showing Codell Griffin as vice-president. The vice-president of the corporation shall be Codell Griffin Jr., That is Walkie, of which he only has 1.4 something interest.

And there is Piedmont, but with respect to this

pg 18

Crocker testified that all the interests, the money, came from Codell Griffin although he is not listed as owning.

In Richton Limited we have an investment of \$38,000 including the balance of the \$22,500 and a contribution as reflected on the 1975 tax return of Richton Limited showing Codell Griffin with an additional \$15,000, and that is \$38,000 roughly; and in 1975 Griffin paid \$3,500 on his tax liability.

The particular year he paid it for is not here but the exhibits are in evidence. That is a total in 1975 of \$120,000.

1976: Again the rental payments \$3,400. Freedom National Bank has a deposit, total deposits, and I am talking of both the checking account and the savings account, of \$8,500. Citizens and Southern Bank as to Walkie, \$2,750; Piedmont deposits of \$9,900; legal fees to Mr. Feaster in 1976 were \$6,000; and an additional tax payment of \$5,000 for a total of \$35,000 in 1976.

With respect to each of those years, 1971, \$800; '72, \$16,000; '73, \$93,000; '74, \$115,000; '75, \$120,000; and '76, \$35,000, approximately \$382,000, the Government submits that through all of those documents the substantial income requirement has been met.

With respect to that Jacqueline Martin testified

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1 pgrf 19

2203

2 that she had personally delivered \$65,000 to Codell
3 Griffin. I suggest to you that is prior to 1971 first
4 off. And she said that --

5 MR. SCHMUKLER: I object to that, your Honor. That
6 was not the testimony.

7 MR. GARNETT: She said she no longer lived
8 with him as of 1972 --

9 MR. SCHMUKLER: It was October of 1972.

10 THE COURT: You can argue that.

11 MR. GARNETT: Their relationship terminated
12 and the only involvement they had was a professional one
13 when she opened Jackie's Boutique in 1973.

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2 The testimony of 1973 as to \$40,000 which came
3 from numbers which was invested in the store, if you recall
4 I brought out on my redirect examination that she was in
5 Greenville and he was in New York sending her money and
6 sent it through his mother and Western Union. How does she
7 know where it came from? She said he told her.

8 He didn't tell her about his conviction in 1971
9 for heroin, so I suggest to you throughout this case, with
10 the exception of Leander Clarke, there is no woman who is
11 involved in these transactions, there is no knowledge as to
12 what they did other than the person who told them and I
13 caution you to question the validity of what was told to them.

14 Gene Simmons from Gidron Cadillac, he told us
15 on direct examination that he sold cars. On cross-examina-
16 tion first he said he wasn't involved in any gambling, he
17 didn't know -- he knew they gambled but through Mr. Schmukler's
18 leading questions and his responses --

19 MR. SCHMUKLER: I object to that. Your Honor
20 made rulings as to the propriety of any questions put to
21 the witness and for him --

22 MR. GARNETT: If you recall, Mr. Schmukler didn't
23 ask him how much, he said wouldn't they approximately be so
24 much money or win this or that much and his answer was yes.

25 After he already testified on cross-examination

1 from another counsel or on direct, the record will reflect
2 it, he didn't know what they did, how much money they made
3 or how frequently, because he wasn't there that often and
4 the testimony was he knew they gambled.

5 Furthermore, Mr. Schmukler attempted to bring
6 out the possibility, through his questions and answers that
7 Codell Griffin purchased this Seville with money he won in
8 gambling. For this Mr. Simmons said he didn't know, it could
9 be possible.
10

11 We are not dealing with possibilities, we are
12 dealing with facts and facts as to this case, one of the
13 facts is did he buy he car with this money? We suggest the
14 evidence supports his buying it with the fruits of narcotics.

15 Secondly, he was alleged to be playing the numbers
16 every day. The government doesn't contest this and believes
17 Mr. Griffin played the numbers regularly. There is no basis
18 for contesting that, we would agree with it.

19 But he played numbers every day according to
20 Jackie and he played back in 1969 and 1970 and 1971 when
21 they were together.

22 According to Simmons he gambled, he didn't know
23 whether he played numbers, but he shot craps on 116 Street
24 in 1975 when he sold him cars.

25 There is no testimony here that any substantial

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pgrf 7

Simmons-cross

car to Mr. Griffin?

A I would not be certain but I would assume that maybe, something to that effect.

MR. GARNETT: Your Honor, unless this witness personally knows --

THE COURT: Do you know whether he won anything or not?

THE WITNESS: Not really. They gamble at that particular spot. I know that much.

MR. GARNETT: May we have a short side bar on this?

THE COURT: No. Go ahead.

Q Mr. Simmons, don't I make an accurate statement when I say that --

THE COURT: You have enough of that. Go on to something else. He has told you what he knows.

Q Has ne ever taken any of your money gambling, the defendant?

A No.

Q But you have gambled there?

A Yes.

Q You have seen this defendant gambling there?

A Yes.

Q You have seen him winning there?

pqrf 8

Simmons-cross

APP 130

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A Yes.

Q You have seen him winning large sums of money there?

A On different occasions.

Q Not from you?

A No.

Q But from other people. Is it fair to say you have seen him win 10 or \$20,000 at the dice table?

MR. GARNETT: Here we go again.

Q You are shaking your head. I assume the answer is no.

A I have seen him win money but I have never counted it.

Q How much money did you believe him to win?

A I've seen him win up to \$7,000.

Q On more than one occasion?

A I don't go down there that much. I have seen him gamble and win.

Q On more than one occasion?

A One or two occasions.

Q If you know of your own knowledge please answer and if you don't know, again, answer accordingly.

Do you know when a person is successful in placing a number and makes a "hit" in common parlance --

ards

Martin - cross

THE COURT: Any objection to answering? I will
allow it.

A She is a numbers writer.

Q How long has your mother been doing that?

A 27 years.

Q Have you seen your mother do it, take her
numbers?

A I work with her when I was here.

Q In other words, you were a numbers writer at
one time too?

A Not really a writer, just helped her do the
work.

Q That work consists of taking betting slips and
counting up money?

A Yes, it does.

Q Consists of turning it in to some third party?

A She was a controller and turned it in to some-
body over her.

Q In other words, in the numbers operation your
mother held a good position, would it be fair to say?

A Yes.

Q Now, to your knowledge, did Cody Griffin bet
numbers?

A Yes, he did.

ards

Martin - cross

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Q How often did he do that?

3

A It was a daily thing.

Q Every day?

6

A Every day except Sundays. We don't run on Sundays, not when I was here.

7

THE COURT: You don't live in New York now?

8

THE WITNESS: No, I don't.

9

Q The reason no numbers are written on Sunday is

10

because no race tracks operate on Sunday, is that right?

11

A Right.

12

Q Did you ever place number bets on Cody's behalf?

13

A Yes.

14

Q Did you place those bets with monies provided

15

by him?

16

A Yes, I did.

17

Q Did you place those bets with your mother?

18

A Yes, I did.

19

Q Can you tell me if your mother ever extended any

20

credit in connection with any numbers bets to any of the

21

customers?

22

A Her regular customers, yes.

23

Q Was Cody one of her regular customers?

24

A Yes.

25

Q Was he getting credit from your mother from time

1 ards

Martin - cross

1919

2 to time?

APP 133

3 A Yes.

4 Q By credit do you mean that his number would be
5 put in without his advancing the money?

6 A At times, yes. When he had the money he would
7 give it to me and I would pay her.

8 Q You could run up an account with your mother?

9 A Yes.

10 Q If he won the amount he owed would be deducted,
11 is that right?

12 A That is it.

13 Q To your knowledge was Cody a frequent winner
14 at numbers?

15 A Very much.

16 Q How much money was he betting a day on an average?

17 A When I first met him he started off light, about
18 twenty to forty a day and went up more.

19 Q By the way, in your opinion, when you first
20 met Cody did you come to the opinion at some point in your
21 relationship that Cody was a constant gambler?

22 A Yes, I did.

23 Q When you first met him was he working?

24 A Yes, he was.

25 Q Where was he working?

APP 134

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Martin - cross

A On 112 Street and Seventh Avenue in a grocery store.

Q Do you know the name?

A A superette, something like that.

Q Would it refresh your recollection if I suggest the name Granger's Superette?

A Yes.

Q Do you know what time Cody would go there to work in the morning?

A I think 6:00 in the morning until 2:00 in the afternoon.

Q Sometimes work even later than that?

MR. GARNETT: Can we fix a time, your Honor.

MR. SCHMUKLER: I will.

A I'm sorry?

Q Did he sometimes work even later than that?

A When called for.

Q What was his work in the store?

A Ringing up customers' groceries, packing them, that was it.

Q Also stock shelves?

A Stocking shelves and putting the stock up.

Q Do you know if he worked in the butcher department there too?

ards

Martin - cross

A Yes.

Q Did Cody bet with him?

A A great deal.

Q Cody hit numbers with him?

A Yes, he has.

Q About how much money has Cody won betting numbers with your mother?

A \$65,000 so far.

Q You say he had numbers bets elsewhere. Do you know how much money he has hit elsewhere that you know of?

MR. GARNETT: Of her own knowledge?

THE COURT: Just tell us what you know.

A No, I can't speak on others per se.

Q Did you at any time ever make those numbers hit payments or collect those numbers hits from your mother on Cody's behalf?

A Yes, I have.

Q What was the most you ever collected for Cody on any single occasion?

A \$45,000.

Q How was that money paid?

A Fifties and one hundreds.

Q Is there a reason that it is paid in high denominations?

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2 and that, it seems to me, has to be paramount in this
3 situation. In the light of that I can't see giving you
4 less than I am going to give you.

5 It's the judgment of the court that on each
6 of the counts of which you have been convicted you serve
7 a term of 15 years, the terms to run concurrently, special
8 parole of an additional five years.

9 As Mr. Schmukler pointed out, if you don't measure
10 up when you come out that could mean 20 years' sentence.
11 That's the judgment of the court.

12 I want to formally declare a mistrial on all
13 open counts.

14 MR. GARNETT: I believe that's Count 2, your
15 Honor.

16 THE COURT: I formally declare a mistrial on
17 Count 2.

18 MR. SCHMUKLER: May I have a moment, Judge?

19 (Pause)

20 MR. SCHMUKLER: Your Honor, I understood that
21 the formality of a mistrial occurred when the jury announced
22 that they could no longer reach a verdict on that count.

23 THE COURT: Somebody thought it ought to be
24 formally declared.

25 Mr. Schmukler, do you have the funds to file a

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2 conviction of heroin.

3 In connection with that I notice that in the
4 Probation report it was referred to that Codell Griffin
5 was a user of narcotics. I would suggest to your Honor
6 that there is not a shred of evidence anywhere other than
7 the defendant's own self-serving statement that he was
8 a user of narcotics.

9 THE COURT: He doesn't claim to be a user now,
10 in any event.

11 MR. GARNETT: That's correct, your Honor. I
12 believe it was in 1971, the statement that was offered
13 by the defendant was offered in connection with the arrest
14 and conviction in 1971 for heroin.

15 As I said, the defendant stands before this
16 court convicted of masterminding a massive street level
17 distribution of heroin, and I again direct the Court to
18 the concepts of street level distribution. Your Honor
19 is well aware that in this court substantial sentences have
20 been meted out for distributors of heroin. Generally,
21 your Honor, the importers are those who receive heroin
22 directly from out of the country from other exporters
23 in other countries. These sentences are reflected in
24 a number of cases. As I understand, Mr. Kuznesof has provided
25 the Court with some information on these other sentences.

jhh

I will admit, your Honor, that those sentences, generally, as I said, are meted out to those who are the importers of heroin. But I pose one question for the Court, and that is is it more important to mete out substantial sentences for dealers of narcotics who distribute between each other than it is important to mete out sentences for dealers who distribute to the ultimate victims of heroin, that is, the addicts and users on the street level.

This is somewhat a novel prosecution by this office, the United States Attorney's office for the Southern District of New York, that is, prosecuting a major street level distributor. That normally has been left to the discretion of the state courts. However, the affliction of drugs on our society, your Honor, transcends all our citizens and all classes and all neighborhoods.

Your Honor heard substantial testimony about the massive distributions of heroin in one block of central Harlem, and that is 116th Street between Seventh and Eighth Avenues. Our laws apply to all persons, your Honor, not only the major distributors of heroin, the major importers, but also the major distributors, as the government has alleged Mr. Codell Griffin is.

This court is a final arbiter, your Honor, of the law and its application to this type of narcotics

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2 activity. Society has a great interest, your Honor, in
3 the outcome of your Honor's judgment as to the proper
4 and appropriate sentence to be meted out.

5 We would have nothing further to add.

6 THE COURT: Mr. Schmukler.

7 MR. SCHMUKLER: If I may, your Honor, first off,
8 I was unaware that any information had been submitted to
9 your Honor with respect to sentences handed out in other
10 cases, what those sentences were, as to what the circum-
11 stances were in those particular cases, and I don't know--

12 THE COURT: The information submitted to me is
13 all public record.

14 MR. GARNETT: May the record reflect that I have
15 just handed Mr. Schmukler a copy of a notice distributed
16 throughout our office as to the cases in the Southern
17 District within I believe the last year and a half and
18 the sentences which were imposed.

19 MR. SCHMUKLER: That is an outline of sentences
20 handed out based on a report made on January 21, 1977.
21 Is the Court in possession of this, your Honor?

22 MR. GARNETT: I don't believe your Honor has
23 this particular outline. I believe what may have been
24 passed to your Honor is a memorandum submitted to Judge
25 Owen in connection with the case of United States v. Alvarez.

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2 THE COURT: I have a copy of that memorandum.
3 I don't know if it's of any consequence. You can look
4 at it.

5 MR. SCHMUKLER: Mr. Garnett has furnished me
6 a copy. I wanted to know if your Honor received the same--

7 THE COURT: I have this copy.

8 MR. GARNETT: Your Honor, might I clarify.
9 What I have handed Mr. Schmukler is a memorandum from
10 the chief of the narcotics unit of the U.S. Attorney's
11 office distributed to members of the narcotics unit. That
12 is not what your Honor has seen, but it reflects the same
13 sentences that were recorded in the sentencing memorandum
14 filed in United States v. Juan Antonio Alvarez, 76 Cr. 324,
15 and it lists the cases, the indictment numbers, the sentences,
16 and the judge.

r2 17 THE COURT: That is a document that was referred
18 to Judge Owen and I got a copy of it. If you want to make
19 the record clear, I also have a copy of this memorandum to
20 Mr. Forcinito, which I can't understand, but maybe you can.

21 MR. SCHMUKLER: The only thing I saw, Judge, was
22 the Probation report.

23 THE COURT: This is a statistical survey of
24 sentences. I can't understand it.

25 MR. SCHMUKLER: If this does not form a basis

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3 the outcome of your Honor's judgment as to the proper
4 and appropriate sentence to be meted out.

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24 passed to your Honor is a memorandum submitted to Judge
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1 jhh

2 for your Honor's sentence here, then I am, frankly, un-
3 concerned about it.

4 THE COURT: That one you don't need to worry
5 about. This one I have read through and it may have affected
6 me one way or another. You may want to look at it. This
7 one I can't understand.

8 Why don't you take a minute and look through it.
9 I looked through it. It might have an effect on me. I
10 don't know.

11 MR. SCHMUKLER: Your Honor, it appears to be
12 about --

13 THE COURT: It's a whole lot of sentences.

14 MR. SCHMUKLER: It's about 20 pages of information
15 here, Judge. Is it fair for me to take this time now to
16 review this document?

17 THE COURT: You have taken as much time already,
18 frankly, as I have on that document. It's a whole bunch
19 of sentences, including one I issued that you are familiar
20 with, the Stassi sentence.

21 MR. SCHMUKLER: From what I know of the Alvarez
22 case and what I know of the Stassi case, I don't think
23 any fair comparison can be drawn.

24 THE COURT: I don't think it has much bearing.

25 MR. SCHMUKLER: The Stassi case involved a



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